lor, and thereafter put another deed on record from the said Emma Taylor to his sister, Martha McIntire. That the said Emma Taylor was a fictitious person, and that the consideration mentioned in the deed from Emma Taylor to Martha McIntire was fictitious. That subsequently, by fraudulent representations, the said Edwin A. McIntire got the said Jenison to execute a quitclaim deed to Emma Taylor.

Subsequently, an amended bill was filed by the complainant, making the same accusations as those in the original bill, and charging further that the sale made by McIntire under the Jenison deed of trust was made in McIntire's own interest, with the fraudulent intent to get possession of the property. That the $425 note given by Jenison and secured by deed of trust given by him was fictitious and manufactured by McIntire to the same fraudulent end. That the deed to Taylor was but a cloak to cover up his fraud, and that, Emma Taylor being a fictitious person, complainant charges that the deed to her was void, and prays that the sale under the deed of trust at which the property was knocked down to Jenison be set aside, and that an account be taken of what is due under the $450 deed of trust, and upon payment of the money found to be due, which she tenders herself ready to pay, that a decree of the court be passed declaring the complainant seized of her former estate in the property, and that the trustees, Martha and Edwin A. McIntire, be called to account for all rents, issues, and profits received by them on account of said real estate since this foreclosure sale.

The answer of Edwin A. McIntire denies any and all allegations of fraud or deceit or fraudulent motives or practices, and avers that the sale was *bona fide* in all respects, and that he had no interest whatever in the prop-

erty. That it belonged to his sister, Martha McIntire, who bought the property in the regular course of business transactions.

Hartwell Jenison, who was made a party defendant, also answered the bill and amended bill, and states that he directed the sale to be made and the property to be bought in for him if necessary for his protection, and that he made the deed to Emma Taylor and also the quit-claim deed to Martha McIntire. That he knew nothing whatever of any fraud or unfair dealings on the part of Edwin A. McIntire.

The defendant Martha McIntire, in her answer, denies that she participated in or had anything to do with any fraudulent scheme by which to get possession of the property, or that she had any knowledge of any fraud being perpetrated or any misbehavior on the part of the defendant Edwin A. McIntire, but sets up that she was a true and *bona fide* purchaser, and was an innocent holder thereof.

Upon a full and careful hearing of the case upon the bill, answers, and proofs, and a rehearing thereafter allowed and had, the court sitting in Special Term passed a decree dismissing the bill of complaint. From this decree the complainant appealed, and upon the case being heard in the Court of Appeals it passed a decree reversing the decree of the court below ; declared the sale under the Jenison trust to be void, and directed the case to go to an Auditor for a statement of the account as to the amount due on the Jenison note, and that the defendants Martha and Edwin A. McIntire account for all the rents, issues, and profits on the property since the time of the sale under the said deed of trust, and that upon the coming in of said report a final decree should be passed annulling each and all of the several trusts, deeds, and

conveyances that cloud the title to said premises, and awarding possession thereof to complainant. It further provided that upon paying whatever sum might be found to be actually due, first to said Jenison and then to the defendant Martha McIntire, and all costs to be taxed against the defendants, a decree shall be made setting aside the sale made under the said Jenison trust.

The Auditor subsequently filed his report, containing a statement of account, and finding that, after allowing $350 on account of the Jenison note and $3,300 for construction of the improvements, and after charging the defendants Edwin A. and Martha McIntire with the reasonable value of rents and revenues of the property, or what should have been received by them on the property, from the time of the sale thereof under the Jenison trust, there was an indebtedness on the part of Edwin A. and Martha McIntire of $1,664.93. To this report the defendants Edwin A. McIntire and Martha McIntire separately excepted, Edwin A. McIntire excepting to the Auditor's finding them chargeable with the rents and profits of the improvements that were made on the property by Martha McIntire after she purchased the same. The defendant Martha McIntire excepted to that part of the report which charges her or the defendant E. A. McIntire with the rents and profits of the property as improved by her. She also excepted to that part which charges her or the defendant Edwin A. McIntire with the rents received from the improvements made upon the property after it was deeded to her. She further excepted to that part of the report which does not allow her credit for the $425 note, with interest from June 29, 1881.

The complainant excepted to the findings of the Auditor in allowing the cost of the improvements made on the property by Martha McIntire.

Upon the hearing of these exceptions at the Special Term, the Auditor's report was affirmed, and it was further decreed that the complainant recover from the defendants the sum of $1,664.93, with interest from the 3d day of July, 1896, and that the deeds be vacated and set aside. It was decreed that the deed of trust from Mary Pryor and her husband to Edwin A. McIntire, securing Hartwell Jenison, under which the sale was made; the unrecorded deed from Martha McIntire to Mary C. Pryor; the quitclaim deed from Hartwell Jenison and wife to Martha McIntire; the deed in fee from Hartwell Jenison and wife to Emma Taylor; the deed of trust from Hartwell Jenison and wife to Edwin A. McIntire securing the $425 note, and the deed from Edwin A. McIntire, trustee, to Hartwell Jenison, which was the deed from him as trustee after he sold the property to Jenison under the deed of trust from Pryor to him securing Jenison, and the deed from Emma Taylor to Martha McIntire, should all be vacated and annulled. And further that the defendants should deliver forthwith possession of the said property to the complainant. From this decree the defendants appealed to the Court of Appeals, and the complainant also appealed from so much of the decree as overruled her exception. Upon a hearing, the Court of Appeals passed a decree affirming the decree of the court below. From that decree the defendants Edwin A. and Martha McIntire have appealed to this court.

2. SPECIFICATION OF ERRORS.

1. The court below erred in not dismissing the complainant's bill and amended bill of complaint.

2. The court below erred in passing a decree annulling the sale made under the deed of trust to secure Hartwell

Jenison in the sum of $450, and in setting aside the various deeds of conveyance under which the defendant Martha McIntire derives title to the property in question.

3. The court below erred in annulling and vacating the deed of trust from Mary C. Pryor and Thomas Pryor to Edwin A. McIntire, recorded in Liber 91, folio 499, of the land records of the District of Columbia, and also the other deeds of trust and deeds affecting or clouding the title of complainant to the property in question.

4. The court below erred in decreeing that the complainant recover of the defendants the sum of $1,664.93, with interest from the 1st day of July, 1896.

5. The court below erred in decreeing that interest should be paid by Mary C. Pryor on the $350 only from the date of the decree passed by the court at the Special Term on July 16, 1896.

6. The court below erred in decreeing that the defendant should forthwith deliver possession of the property in question to the complainant.

7. The court below erred in not finding that the defendant Martha McIntire was an innocent purchaser of the property without notice.

8. The court below erred in not dismissing the bill on account of laches on the part of the complainant.

9. The court below erred in not dismissing the bill for want of equity.

3. BRIEF OF THE ARGUMENT.

I.

Before entering into the discussion of the testimony, it will be observed that the bill of complaint admits the

execution and delivery of the deed of trust securing Hartwell Jenison, and under which the property was sold, and the validity of the consideration mentioned in said trust. It will further be noted that no complaint is made as to the advertisement of the property for sale under the terms contained in the trust, or that the property was sold for less than its value. The most that can be gotten out of the bill of complaint is that Edwin A. McIntire, who had nothing whatever to do with the original transactions between Jenison and the Pryors out of which arose the giving of the deed of trust for $450, and who was not known by Jenison at that time (399, 403), told complainant's husband that the sale would only be a matter of form, and that he could buy it in, and that it was knocked down to her husband at the sale for $700, and that, sometime after that, he said they could pay rent and it would go towards paying off the debt, and that they, acting upon that statement, did pay some rent at the rate of $6 per month. This is the ground upon which the complainant comes into a court of equity, after a lapse of nine years and four months, and asks for the sale to be set aside, after waiting until substantial value had been given to the premises by improvements by the purchaser, and until after both the auctioneer who sold the property, and the Justice who took the acknowledgment of the important deed in the transaction, had died. Supposing, however, for the sake of argument, we admit that there are proper grounds for complaint pleaded in the bill, and that there were no laches on the part of the complainant in bringing this suit, what does the proof disclose to warrant the passing of the decree made by the court below?

(a) *The charge that Edwin A. McIntire said Pryor could buy in the property.*

As to this charge, we have only the naked statement of complainant that she and her husband saw the autioneer's flag out for the sale, but did not know what it meant. That Mr. McIntire came there that day and said "the trustee was pushing him," and he was compelled to have a sale, but that he would allow the husband to bid it in, and would knock it down to him, and that she supposed it might have been a month when he came back and said Jenison was pushing him, but that he would let them pay $6 a month as rent until the debt was paid and then convey the property back (23). This story is so vague and improbable that it might be passed without comment, but as it is the connecting link in the chain of circumstances going to make up the claim upon which the bill was filed, we prefer to call the attention of the court to a few suggestions before proceeding to the other charges. In the first place, this averment is wholly denied in the several answers of the defendant Edwin A. McIntire, and also emphatically denied in his testimony. At page 195 his testimony on this point is as follows:

"Q. I want to know whether before the sale he (Pryor) had made any arrangements with you, or proposed any arrangements with you, by which he should become the purchaser at the sale?—A. He never said anything to me about it.

"Q. Upon terms that you and he were thereafter to agree upon?—A. He never intimated anything of the kind to me. I am too well acquainted with my duties as trustee to listen to anything of the kind.

"Q. Did you or not have authority to make such terms?—A. I had no authority to make any such terms.

"Q. Were you anything else than a bare, naked trustee with the authority simply of a naked trustee at that time?—A. That is all.

"Q. You had no power to make terms with him?—A. Not the slightest.

"Q. Except those advertised and named in the deed of trust?—A. No, sir.

"Q. And you say you did not?—A. I did not.

"Q. And there was no conversation between you relating to it?—A. None at all. I never spoke to Mr. Pryor in Mrs. Pryor's presence. He universally came to my office. I never saw her at my office.

"Q. Did they take the lease upon the property after it was sold?—A. Not after the sale to Mr. Jenison. After they had made the conveyance to my sister, Martha McIntire, for the consideration of $5, she assuming the incumbrance, one of the conditions was that she should lease the property to Thomas Pryor, so that he could carry on the coal and wood business."

The lease is in writing, and is Exhibit A. H. No. 16, on page 438. This agreement was made by the consent and approval of Martha McIntire (196). There was no other terms than those embraced in the paper (196). Again he says:

"There was no such understanding as that at all; on the contrary, the deed of the property to my sister Martha was made to her before she authorized this agreement" (196). "He had parted with the property, and then she turned around and leased it to him for a year so that he could carry on his coal and wood business. He feared that if the property was sold under the deed of trust, some new party would get it and put him out of the business."

Again (187, 188), Mr. McIntire testified that about the 3d of May, 1881, Thomas Pryor came to him and said he could not pay the $450 note, "and asked me whether I could get a purchaser of the property who would take it off his hands and assume the encumbrance and taxes." Thereupon he wrote to his sister Martha and suggested that it might be a good chance for her to make an investment. The deed was made to her, the consideration being

$5, she to assume the incumbrance and give Pryor a lease of the property for a year. Within a very short time Mr. McIntire found, upon examination, that the taxes instead of being only $30, as represented to him, were ten times that amount. He reported this fact to his sister, she declined to pay that amount of taxes, and the property went to a sale.

It further appears from the evidence of the defendants that Mr. E. A. McIntire was authorized to make the sale directed by Mr. Jenison, the holder of the note, and to bid the property in, to protect him (188). Exhibit A. H. No. 5 is a letter to E. A. McIntire from Mr. Jenison, and signed by him, directing the former to bid for him at the sale an amount sufficient to cover the loan, taxes and expenses, and is dated June 9, 1881 (430). Mr. Jenison also testifies (p. 43) on that point as follows:

"Q. I show you the deed of trust from the Pryors to Edwin A. McIntire, Exhibit A. H. No. 4, and call your attention to the endorsement on the back of the paper, which reads as follows: 'Failure having been made to pay the note secured by the within deed of trust, the trustee is hereby authorized to advertise and sell the property at public auction, Wash'n, D. C., May 25, '81,' and purporting to be signed 'H. Jenison.' Will you look at that and say whether that is your signature?—A. Yes, sir.

"Q. You did authorize it?—A. Yes, sir.

"Q. Please look at the paper now handed you [which was Exhibit 5, being the authority to bid in the property] and state if you ever saw that before?—A. That is my signature, and of course I saw the paper when I signed it."

This witness, it is to be observed, is one of the complainant's witnesses, whose answer to the original bill was prepared by counsel for complainant (42, 43), and with

whom counsel for complainant had an understanding that if Jenison should, by this proceeding, get the full value for his note, he was to be satisfied with $350, and the complainant's counsel take the difference. Jenison was called, as we suppose, to maintain the allegation in the bill that he never authorized the sale and that the property was sold to him without his knowledge or consent, and that he knew nothing about the deeds from him to Emma Taylor and Martha McIntire.

Now, need we go further into the discussion of this averment in the bill—might we not rather put this aside, calling the attention of the court to the absurdity of the proposition on its face? Would any one suppose that such an arrangement as stated by Mrs. Pryor, would, for a moment, be considered by any one, howsoever ignorant of business matters, much less by a person engaged in the real estate business? Under such an arrangement the debt could not have been paid off in less than ten years, and surely McIntire would not have consented to that, even if he possessed the authority to do so, which he did not, as we have shown. And, again, it is wholly inconsistent with all the circumstances, such as the giving of the deed by the Pryors to Martha McIntire, the leasing of the property under a written agreement, with no such provision in it, the notice to the trustee to sell, the authority taken by McIntire to bid the property in for Jenison if necessary, and the fact that it was sold at the sale to Jenison, as shown by the auctioneer's bill and receipt.

(b) *As to the property being knocked down to Thomas Pryor for* $700.

The next fraudulent act alleged is that the property at the sale was knocked down to Thomas Pryor for $700. On this point the complainant testified that she heard the auctioneer knock it down for $750 to her husband,

Pryor (23). But it appeared on her cross-examination that when the sale took place she was in her house, at the front window, which was across the alley and was about 130 feet from the front of the lot where the sale took place. Complainants also called one James Ragan to testify on this point; he thought it was knocked down to Thomas Pryor (20). On cross-examination (21) he testified as follows: "Being at the sale, I have a faint recollection that the property was knocked down to Mr. Pryor." "Q. Did you hear it knocked down?—A. I probably did, but I don't remember." Thomas P. Jacobs was another witness examined on this point. He testified that he was coming along, just going home, and had driven his horse in the yard on the opposite side, and as he came out on the pavement he saw Jim Ragan coming away from the sale there; "I asked him who bought it, and he said that Pryor bought it in" (31). This statement was of course incompetent and was objected to at the time. Two other witnesses were called as to this point, Albert Johnson and Robert Holliday. Albert Johnson testified that he was at the sale; that the property was knocked down to Thomas Pryor (32). On cross-examination he stated that he did not know who the auctioneer was, or what kind of a looking man he was; did not know whether Mr. McIntire was there or not; did not know who bid on the property; did not hear Pryor say anything; did not hear him bid (33). Robert Holliday testifies that he remembers the sale, and he was asked: "Q. Do you remember to whom the property was knocked down?—A. Well, it was struck off to Pryor. I was standing right at the gate" (34). On cross-examination he stated that he did not know who called Pryor's name. Both of the last witnesses signed their depositions by mark. This was all the testimony offered to show that the property was knocked down to Pryor.

To meet this evidence we have the testimony of Amos Fouche and James F. Boiseau, who examined the premises with a view of ascertaining if a person standing in Mary C. Pryor's house could see what was going on in front of the property when it was sold; this was to meet Mary C. Pryor's testimony on this point. They testified that they did not think any one could see or hear what was going on (183, 201). Fouche also testified that the diagram of the premises, which is Exhibit A. H. No. 24 (445), is as correct a diagram of the premises as you can get, unless you measure it and lay it off by rule (184), and from the diagram it will appear perfectly plain, that she could not see what was going on at the sale. Edwin A. McIntire also testified on this point, and says the property was not knocked down to Pryor, but that he bid it in as directed by Jenison, to which fact we have already referred.

But the strongest evidence offered by either side on this point was the statement made by the auctioneer himself. Although we are deprived by death of his oral testimony, we have his written statement in the shape of a bill and receipt made in his own handwriting, as proven by Richard Pettit, who was in the office with the auctioneer, Mr. Coldwell, and knew him from 1874 until his death (159, 160, 161, 162). See also E. A. McIntire's testimony (192). The bill and receipt are Exhibit A. H. No. 21 (page 444), being as follows:

"Mr. Edwin A. McIntire, Trustee, to J. T. Coldwell, Dr., Real Estate Broker and Auctioneer, No. 806 F Street Northwest. Removed to 575 Seventh Street. 1881. June 17. To Auctioneer's services, sale of part Lots 21 & 22, Sq. 569, to H. Jenison, at 31 c. per sq. ft. . . . . $25.00."

"Rec'd pymt.,

"J. T. COLDWELL, Auc."

This proof, we submit, removes all doubt that the property was not knocked down to Pryor, and, on the contrary, shows that it was knocked down to Jenison.

This being so, what becomes of the complainant's case; does it not necessarily fali with these averments? For the sale being regular, and Jenison becoming the purchaser, all interest that Mrs. Pryor had in the property passed with the sale, and she no longer had any concern in it; and it would make no difference to her what happened afterwards with respect thereto.

But suppose this is not so, what then? It is further claimed that a deed was gotten by fraudulent acts of E. A. McIntire from Jenison to Emma Taylor, and also a quitclaim deed later on from Jenison to Martha McIntire, which last deed was not explained to Jenison, and further that Emma Taylor was a fictitious person. As to the first of these charges,—that, by fraud, Jenison was induced to execute a deed to Emma Taylor, and later on a quitclaim to Martha McIntire,—there was no proof offered by any witnesses on the part of the complainant, but they intend to rely on the evidence of Jenison and E. A. McIntire and circumstances connected with the recording of the papers. Jenison, in response to the question, "When the Emma Taylor note fell due for $425, then what was done?" put by Mr. Mackey, answered, "Then that deed of conveyance was made to her, for the reason that I had no means of redeeming the property"(38). Again, he was asked, "What I want to get at is, what was stated to you by Mr. McIntire, if anything, to induce you to make the conveyance to Emma Taylor, instead of taking up the note for $425?" and answered as follows: "Well, perhaps it was more on my own part in saying that I did not wish to carry the obligation any further. If the property could be sold to cover this additional expense, then I did not wish to carry it."

Again, we have in that connection a letter from Jenison to E. A. McIntire, being Exhibit A. H. No. 6 (430), which is as follows:

"TREASURY DEPARTMENT,
"REGISTER'S OFFICE, *Ap'l* 13, 1882.

"E. A. MCINTIRE.

"D'R SIR: I take it for granted that you have not effected any trade or exchange for my lot and presume there is not much prospect of making a sale before maturity of the trust deed. I do not think there would be any object in renewal, as it is not likely property in that locality will be enhanced by holding on; besides, I am not in a position to carry it. I shall doubtless have to submit to a sacrifice by forced sale, but may realize a little over the incumbrance should there be any competition in bidders. Unless you think you can do better I wish you would advertise and do the best you can in its disposition."

He concludes by asking Mr. McIntire to call on him, and signs the letter, "Yours truly, H. Jenison."

The same witness, when questioned as to the quitclaim deed,—which was not to Emma Taylor, as claimed by complainant, but to Martha McIntire,—testified that he gave the quitclaim because there was a defect in the acknowledgment of his deed to Emma Taylor (39). He further testified that McIntire paid him $100, and that he did not remember what the explanation was for giving the $100 (39). Mr. McIntire testified that he gave Jenison the $100 because he would not execute the quitclaim without he was paid that (198). And in that connection he testified how the defect came to be found out, and how he came to pay the $100 (198). From this testimony we take it to be established that these averments as to the "Jenison deed to Emma Taylor" (as charged, but to Martha McIntire in fact) being made through fraud on

the part of E. A. McIntire are wholly without foundation in fact and are in the same line with the averments as to Mr. McIntire agreeing that Pryor should bid in the property, and that it was knocked down to Pryor.

This leaves us to dispose of only one more alleged fraudulent act complained of—that is to say, did Mr. McIntire use a fictitious person, called Emma Taylor, to aid him in the alleged scheme by which it is charged he got the property?

To maintain this allegation one Annie L. Galliher was examined by complainant's counsel, and the substance of her testimony on this point is that she knew Emma T. McIntire; that the witness was a niece of Emma T. McIntire, and that she "understood" that T stood for Taylor, and that she was called Emma Taylor in the witness's father's family (64); that she "thought" she knew Emma T. McIntire's handwriting, and that the writing on cards 5, 6, 7, 8, 9, 10, and 11, filed with her testimony in the case of William McIntire *v.* Edwin McIntire, looked, she thought, like Emma T. McIntire's handwriting, and that the signature "Emma Taylor" to the deed from Emma Taylor to Joseph Forrest looked like the same handwriting (66). This is the only testimony given by any witness on the part of complainant in this case on this point, except another witness, Joseph Forrest, whose testimony was *against* complainant's contention (56). He testified, when being examined by Mr. Mackey, that he had seen Emma Taylor; that she was pointed out to him in Mr. McIntire's office by Mr. Harleston (57). We do not think there were any witnesses in any of the other cases examined as to this point, as it was expressly stated in this case by the counsel for complainant that he would put in all his testimony as to Emma Taylor in this case (269).

There was, however, a mass of irrelevant and incompe-

tent testimony offered by counsel for complainant which, he claims, tends to establish this averment. That testimony consists of a lot of deeds from Emma Taylor to Martha McIntire and deeds from Martha McIntire, and other people with whom Edwin A. McIntire had some connection, to Emma Taylor; and he also produced a witness from one of the Title Companies to show that he had made an examination with the view of ascertaining what deeds had been executed to and from Emma Taylor, and offered in evidence an abstract of said deeds. Another witness testified as to some photographs of signatures of Emma Taylor to deeds that were offered in evidence in equity cause numbered 10,745, McIntire *v.* McIntire, and equity cause numbered 12,761, Pryor *v.* McIntire, and in the case of Brown *v.* McIntire, and also photographs of signatures of Emma T. McIntire and the card-boards testified to by the witness Annie L. Galliher, which photographs were offered in evidence. Counsel for defendants objected to them, for even if signatures were admissible, these were not, for they were but mere copies (100) and were not competent.

Wm. MacLennan was one other witness, who was put upon the stand as an expert on handwriting, and shown signatures of Emma Taylor and Emma T. McIntire to papers not in this case, for the purpose of comparison, and calling forth testimony to show that, in his opinion, the person who wrote "Emma Taylor" on the cards and to some deeds was the same person who wrote "Emma T. McIntire." All of this was objected to as incompetent (87 to 95, inclusive).

The witness Annie L. Galliher, who is the source from which the theory of counsel for complainant was derived that Emma Taylor was the same person as Emma T. McIntire, was embittered against Edwin A. McIntire, and

may be characterized as an exceedingly hostile witness. Her hatred to the McIntires commenced just as soon as she learned, through Edwin A. McIntire, that neither she nor her family would get anything under the will of her uncle, David McIntire, which has been before this court in a noted case. Since then, she has been very active in promoting and taking part as a witness in the various cases brought against Edwin McIntire, though before that she was quite friendly (217, 218). She admits on cross-examination her hostility (68). She testified as to the signature of Emma T. McIntire, but it appears that the signatures on the card-boards which were shown to her and which she said were Emma T. McIntire's signature were not written by Emma T. McIntire, and were not seen by Emma T. McIntire, but were written by Judge Helmick, or caused to be written by him, for the purpose of showing that she could not tell Emma T. McIntire's signature (218, 219, and testimony of Gen. Henkle, 704).

The greater part, if not all the evidence of MacLennan, the alleged expert, was clearly incompetent. This evidence was duly objected to at the time it was offered, and the objections noted upon the record. Photographs were produced also. Photographs at best are but copies. Parties to suits cannot be permitted to manufacture evidence in their own favor, and it is well known that by distortion and other means a skilled photographer can make nearly any kind of a copy which may be desired by the person employing him. If photographic copies may be made for use in any case it seems but fair that they should be made with the co-operation of all the parties to the cause. To permit one of the parties to manufacture them for use as evidence without the knowledge or consent of the other, would be obviously unfair and unjust.

The writings brought from the files of the Register of

Wills were not competent evidence, and should not be considered on the hearing of this case. They were not in evidence in the case for any purpose, nor were they admitted to be genuine.

The rule on this subject is well settled.

Moore *v.* U. S., 91 U. S. 270.
Williams *v.* Conger, 125 U. S. 397.
Hickory *v.* U. S., 151 U. S. 303.
Keyser *v.* Pickrell, 4 App. D. C. 198.

We do not think it necessary to enter into a further discussion as to the bearing and effect of this class of testimony, which was offered in the attempt to show that Emma Taylor did not exist. This leaves us to point out the evidence submitted on the part of the defendants to meet the charges and insinuations gathered from the evidence for complainant. But first it may be proper to refer to the testimony of two or three other witnesses called by the complainant. One was Thomas Darneille, a clerk in the Tax Office, who was called to show by whom the taxes on the property assessed in the names of Emma Taylor and Martha McIntire were paid, and he testified (62) that the taxes on the Emma Taylor property, on Lots 156 and 157, Square 615, and on Lot 21, Square 992, etc., for part of years 1890 and 1891, were paid partly by check of E. A. McIntire and the other part in cash, but the books did not show by whom, and substantially the same as to the Martha McIntire property, as to the years 1889 and 1890. This testimony appearing to counsel utterly immaterial, there was no cross-examination. Another witness was George Swartzell. He testified as to a deed of certain property having been made to him by E. A. McIntire, that he did not pay anything for it, and that afterwards he conveyed it, at McIntire's

request, to Emma Taylor. He does not remember ever seeing Emma Taylor (61). On cross-examination it appears that he, Mr. Coldwell and Mr. McIntire, at the time this property was deeded to him, were in the same office (71). He further testified (72) that his interest was so little in the property that he paid but little attention to it; that he first made a deed of it to Martha McIntire, and that was cancelled before it was recorded, and another deed made (which presumably was to Emma Taylor).

The history of this transaction is fully explained by Mr. McIntire (216). And as the entire transaction seems to us to have so little bearing upon this cause, we pass it without further comment.

Floyd Harleston was a clerk in McIntire's office; knows Emma T. and Martha McIntire; did not recollect meeting Emma Taylor. On cross-examination he admits his signature as a witness to a deed signed by Emma Taylor, and that he must have met her as he signed as a witness; that he has no doubt that he met her; that it could not have been Emma T. McIntire, as he knew her (76). As to this witness, more will be said later on, in discussing defendants' testimony on this point.

The remaining witness was Jacob Eller, who testified that he had signed a deed to Emma Taylor, but did not see or know Emma Taylor; that he had borrowed $350 from Edwin A. McIntire and given a deed of trust on the property; that the money was not given to him, but Mr. McIntire said he would fix the house up out of the money; that shortly afterwards the witness was taken sick, and after he was able he looked at the house and very little was done to it. Afterwards the interest became due and he could not pay it, and told McIntire he could do what he pleased with the property. He asked if

witness meant that he did not care about the property, and afterwards he came back with a paper which witness signed, and afterwards found out was a deed (81). Suit was brought to recover this property (80). On cross-examination it came out unwillingly that Mr. Mackey sent for Eller and brought the suit; that Eller did not even pay the costs of suit (82, 83). The testimony of this witness as to his getting the money for which he gave the deed of trust is fully met by the testimony of Mr. McIntire (220, 221), and from that it appears that Eller came to him with an attorney of the Bar of the Supreme Court of the District of Columbia, Mr. Bigelow, who is still practising before the court, and the money was borrowed for the purpose of paying off a prior deed of trust and some bills that Eller owed, and the balance expended in repairs on the property. That the money was paid principally to Mr. Bigelow, who represented the holder of the prior trust, and the rest paid out on order of Mr. and Mrs. Eller (221, 222). Mr. Bigelow was not called by the other side to contradict this testimony, so we must infer that Mr. McIntire's story of the transaction is true.

Emma Taylor not a Myth.

The appellants have the evidence of at least six living witnesses, in addition to their own, as to the existence of Emma Taylor, two of them being witnesses called by the complainant.

The first was Joseph Forrest, a witness for complainant. His testimony has been before alluded to in presenting to the court the complainant's evidence. He testified that Emma Taylor was pointed out to him by a clerk named Harleston in McIntire's office (57).

Floyd Harleston, another witness called by the com-

plainant, testified to his signature as witness to a deed executed by Emma Taylor and acknowledged before Justice Helmick; that he and Justice Helmick were acquainted with Emma T. McIntire, and that it was not Emma T. McIntire who signed the name Emma Taylor to the deed; that it must have been Emma Taylor or he would not have signed as a witness (75, 76). He had frequently heard the name of Emma Taylor mentioned in connection with business while he was in the office of E. A. McIntire (78). He further testified that whilst he could not say that he remembered the presence of Justice Helmick and Mr. Peugh when the deed from Emma Taylor and Barbara Brown to Martha McIntire was acknowledged, yet he would not have signed as a witness if they had not been present (95, 96). That he was familiar with the signature of Justice Helmick and that was his signature to the acknowledgment of that deed (96). He further testified that he knew Emma T. McIntire and it was not she who wrote the name of Emma Taylor to that deed, and also that Justice Helmick knew Emma T. McIntire (96, 97).

John Taylor, a witness for defendants, kept an ice-cream saloon on "G" street, and knew Emma Taylor. She came there to get cream and he heard her called by a lady who was with her Emma Taylor (144). A lady named Miss Forsythe used to come with her. Miss Forsythe's father kept dining-rooms on "F" street.

Charles Schaefer, another witness, lived in Washington from 1853 to 1880, was engaged in real estate business, and made his headquarters at the office of E. A. McIntire. He met a lady at McIntire's office and was told by some of the clerks it was Emma Taylor; she came in the office quite frequently whilst he was there (153). Emma T. McIntire was pointed out to witness, and he was asked if she was the lady, and he said no (153).

Elmer E. Atkinson was with E. A. McIntire; was with him when he opened his office and remained with him until the latter part of 1880. He remembered that a lady used to come there named Emma Taylor (154, 155).

Harriet M. Harris had a studio on F street in the neighborhood of McIntire's office, and was in his office quite frequently. She met a lady named Emma Taylor at Mrs. Forsythe's dining-rooms on F street, where she took her meals (335). On cross-examination she said she did not hear her first name called. She was introduced to her as Miss Taylor (338).

Samuel A. Peugh, it is important to notice, was first called as a witness by counsel for complainant in the case of Brown *v.* McIntire; and when shown the deed from Barbara Brown and Emma Taylor to Martha McIntire, and asked if he knew such a person as Emma Taylor, the witness answered that he did not (596). He was further asked as to his signature as a witness to the deed, and he testified that he usually wrote his name "S. A. Peugh" (597). On cross-examination he testified that he and Justice Helmick were very intimate friends, and that he was very familiar with his handwriting, and that the signatures of Justice Helmick to the deed both as attesting witness and as the acknowledging officer were his signatures (598, 599). After being cross-examined as to his own signature, the witness asked to be allowed to consult his signature to some old deeds. This witness, it will be observed from his testimony on cross-examination, had been talked to by counsel for complainant before he was examined as a witness, and told that the genuineness of his signature was in question, and counsel for complainant undertook to point out to him a dissimilarity of that signature and his true signature (599). He was subsequently called by defendants in the Brown case, and tes-

tified that he had made an examination, and that his mind was sure that that was his signature as a witness to the Brown deed (605), and that it was Justice Helmick's signature as attesting witness.

He further testified that he knew a lady named Emma Taylor, and that it was his impression that she was Barbara Brown's daughter; that he had met her at Judge Helmick's office (606). That he knew Justice Helmick's signature as well as he knew his own face (608). General Henkle testified that Judge Helmick told him he knew Emma Taylor (704, 705).

In addition to these entirely disinterested witnesses, we have the testimony of Edwin A. McIntire, Martha McIntire, and Emma T. McIntire, who testify in the most positive terms as to knowing Emma Taylor, and their dealings with her. Emma T. McIntire further testifies that she was never called Emma Taylor McIntire; that the "T." in her middle name was put there by herself, to distinguish her from the other Emma McIntire in her family, and that she used the letter T because she used to be called by her father "Tinsey Ush," and she called herself, in babyhood, "Tots" (295). That she never signed "Emma Taylor" to the different deeds to which the signature of "Emma Taylor" is attached (297). She gives the circumstances attending her meeting Emma Taylor; that she met her three or four times (298-299). It further appears from the testimony of E. A. McIntire that he has used every effort to find Emma Taylor; that he has made inquiries for her, and has written to different places where he was told she was gone, all of the letters being returned to him and being an exhibit in this case—Exhibit A. H. No. 28 (450). And he is corroborated as to efforts to find her by the witness John Taylor, who told him that she had gone to Philadelphia (143). We also have the testi-

mony of George T. Gibbons, who was associated with Judge Helmick in the official capacity of constable, during Judge Helmick's whole magisterial career. He testified that Judge Helmick was a very careful man and would not take acknowledgments of persons he did not know without some one identified them (698–699). He also testified that he was familiar with Judge Helmick's signature, and he was very emphatic in his declarations that that was his signature both as attesting witness and to the acknowledgment of the Barbara Brown and Emma Taylor deed to Martha McIntire (100). But in addition, and above all, we have the certificate of Justice Helmick, who took the acknowledgment of Emma Taylor, and as to the weight to be given that as evidence we beg to refer to several decisions of this court.

In the case of *Young* v. *Duvall*, 109 U. S. 573, speaking on this subject, the court said:

"Of necessity, arising out of considerations of public policy, his certificate [meaning the notary public's] must, under the circumstances, be regarded as an ascertainment in the mode prescribed by law of the facts essential to his authority to make it, and if under such circumstances it can be contradicted to the injury of those who, in good faith, have acted upon it (upon which question we express no opinions) the proof to that end must be of such a character as will clearly and fully show the certificate to be false or fraudulent."

The mischief that would arise from a different rule could not be well overstated. In Hammond *v.* Hopkins, 143 U. S. 271, this court said on the same subject:

"We understand it to be conceded that when the evidence was taken in this suit, both of the Justices of the Peace, before whom the deed in 1860 was acknowledged,

as is admitted by the bill, were dead; and in the absence of evidence of fraud or collusion on their part the certificate ought to prevail."

See also—

Insurance Co. *v.* Nelson, 103 U. S. 544, 547.
Cissell *v.* Dutch, 125 U. S. 171.
Hitz *v.* Jenks, 123 U. S. 297.
Drury *v.* Foster, 2 Wall. 24.

The acknowledging officer in this case is dead, but his official acts, wholly unimpeached, are in evidence and are before this court; and they are in this case as presented here conclusive proof that Emma Taylor appeared before this officer and acknowledged the various deeds at the several times mentioned therein, and as certified to by that officer. His certificates should therefore decide this question against the complainant; and it appearing that this charge of the complainant is the foundation upon which the flimsy structure in each of the cases against the McIntires has been erected by counsel for complainant, in this, as also in the other cases, the same must fall, and the complainant in this cause be decreed not entitled to relief.

Martha McIntire a Bona Fide Purchaser.

As is the proof as to Emma Taylor, so is the proof as to Martha McIntire being the owner and innocent purchaser of this property. The only proof offered to sustain the charge that she was not an innocent purchaser is the attempt to prove by the witness Medford, who built the houses after the land was purchased by Martha McIntire, that he built them for Edwin McIntire, and of some witness that Edwin McIntire collected the rent from the

property after his sister purchased it; that he paid some of the tax bills on the property in 1889 and 1890; that there was no such person as Emma Taylor, and the testimony from some bank officials in Philadelphia that Martha did not have as much money in the banks there as she testified she had. We think this is substantially all the evidence on this point offered by complainant.

To meet this, what do we find from the record? In the first place, the contract was offered in evidence under which Medford built the houses. See Exhibit A. H. No. 18 (441), and that recites that it is between Medford & Waldron on the one hand, and Miss Martha McIntire on the other. Again, in the body of the contract, it provides that the cornice is to be according to some design to be suggested by Miss McIntire; and again, in the body of the contract, in reference to painting, it is to be stained if Miss McIntire prefers (442), and that contract is signed by Martha McIntire. Robert Waldron recognizes the signature of the firm of Medford & Waldron to the contract as made by Medford (162). Medford, when called in rebuttal, said he did not hear of Martha McIntire until long after the contract, and that Martha McIntire had not signed it when he signed it (361), yet he admits that the provision as to the painting or staining to be done as preferred by Miss McIntire was in the contract when signed by him (364). And, again, he says he saw Martha McIntire once in connection with the houses, and that was when he wanted to get some money, and Mr. McIntire said Miss McIntire must see the houses; that he wanted her to be satisfied (367). In the first part of his evidence he admits that Mr. McIntire said he wanted the owner of the houses to see them, and when asked by Mr. Henkle who the owner was, he answered, "This lady"—Martha McIntire (54). Again, it appears from the evidence that a release of liens

was required to be furnished before the payment in full was made, and that release is offered in evidence as Exhibit A. H. No. 8 (431), and it recites that in consideration of $1, paid by Martha McIntire, they release all claims and liens to Martha McIntire (431), and is signed by the various sub-contractors who worked on the buildings or furnished material to Medford and Waldron. There is also in evidence a receipt to Martha McIntire for the party walls used in construction of these houses. See Exhibit A. H. No. 9 (432). Medford admits the signature of Cassell to the release of liens, and admits that the other parties whose names appear on the release furnished materials on that contract (52). He also recognizes the bills for the party walls. In addition to this we have the testimony of Edwin A. McIntire and Martha McIntire as to the genuineness of that contract, the release of liens, and receipts for the party walls (227, Edwin A. McIntire's testimony; 110, Martha McIntire's testimony).

It also appears that Martha McIntire had more than enough money in bank to her credit with which to pay for this property and build the houses, although it does not appear that she had as much as $10,000 at any one time; but she did have $6,819 in one bank and $1,825 in another. See Exhibit A. H. 53 (464), and Exhibit A. H. 57 (466, 467). We have also the positive evidence of Martha McIntire that the property was bought with her own money, and that the houses were built with her money (105, 106, 107, 110). Edwin McIntire testifies that he had no interest in the property whatever; that it was bought and paid for by his sister and with her money (193, 194, 223). He further testified as to his collecting the rent and paying the taxes, that he did it the same as he did for other clients of his (223).

It seems to us, in view of what has been shown by

proof, in the form of documentary evidence, such as the deed to the property, contract for building the houses, release of liens, receipts for use of party wall, policy of insurance, in the name of Martha McIntire, which were made at a time when no idea or thought was entertained by any one, not even by complainant or defendants, that there was to be any question raised as to her ownership thereof, and of the positive evidence of Edwin A. McIntire and Martha McIntire, that there should be no question as to her being a *bona fide* purchaser of the property.

This disposes of the various allegations of fraud made in the bill.

Complainant attempted to show in rebutting testimony the value of the property, although the bill is silent upon that point. Her counsel called five or six witnesses to testify as to the value of the ground when it was sold, but they utterly failed to show that it ought to have sold for more than it brought. The first witness was William F. Hellen. All he knew was that Dick Smith had some property in that vicinity and put it in his hands for sale at eighty cents a foot, but that he could not sell it, and had no offer for it, although he tried to sell it (373, 374).

Pedrick Cusick was in the saloon business and never bought or sold any property for other people. He bought some ground on F street in that square, about three hundred feet below it; it was a corner lot having two fronts and improved by a frame house and an old brick building, and he paid a little over a dollar a foot; he did not buy by the foot, but in a lump (375).

John O'Connor was a hack driver; he bought a lot on F between First and Second streets, in 1863, and paid twenty-five cents a foot for it, and that was all. He bought and never sold any (380).

Isaac Levi is in the paint business; and not an expert

in real-estate transactions (382). In 1871 or 1872 he bought a lot with a house on it for $4,000; thought the house was worth $2,500 (381); it was in the same square as this property; could not tell what ground was worth there; never inquired (381).

Harrison M. Bennett is a Government clerk; owned a house next door to that of Levy; left there in 1874; when he left, should judge that property along there was worth 75 cents a foot (384).

Charles Duncanson is a real estate auctioneer; should judge property would have brought from 60 to 75 cents a foot (387). Had a sale of a lot at corner of F and Second streets, with an old frame house on it; it was withdrawn at 79 cents a foot.

This was all the evidence offered, and we presume it was the best that could be obtained by great zeal and industry. Instead of helping in the direction sought, we submit it leaves the complainant in a worse position than she was left in by the silence of the bill on this point.

We have thus reviewed substantially all the evidence as to the charges of fraud alleged to have been practised by the defendants upon the complainant in this cause, and we confidently submit that when the court comes to analyze it and consider it, as a whole, and in the light of what is admitted to be true, there can be no escape and no desire to escape from the conclusion that this and its kindred cases are speculative suits, such as this court has repeatedly censured, founded on the merest conjecture, and built up of defamatory statements ventured at a time when it was thought that, by reason of lapse of time and the death of witnesses, the real facts could not be ascertained.

II.

The Other Suits Against Appellants.

In addition to the evidence offered in the case at bar and to which the attention of the court has already been called, the appellants were required by an order of this court, on a petition filed by the complainant, to bring up the records in certain other suits that were instituted against Edwin A. and Martha McIntire.

Appellee's purpose in compelling us to bring up and print the great mass of matter in those cases was presumably to aid her charges of fraud in her case by such proof as could be found of fraud alleged to have been practised by appellants upon other persons and to create if possible a general atmosphere of suspicion about them. While such evidence is considered by us to be plainly incompetent, it will be briefly stated.

In *Brown* v. *McIntire*, the fraud alleged is that E. A. McIntire, being trustee under a deed of trust executed by complainant's mother, since deceased, to secure a loan of $400 made by Martha McIntire, sold the trust property to Emma Taylor without offering it at public sale as prescribed by the deed of trust. It is not denied that the owner of the property was in default when the sale was made, or that the property was subject to sale, and the only irregularity pretended is that the sale was not in accordance with the terms of the deed.

The evidence to show that no public sale was made is the testimony of several persons who lived in the neighborhood of the property, and do not remember any sale. Of these witnesses, three were school girls, aged 7, 17 and 13 years respectively at the date of the sale, and in school during most of the day (576, 580, 594).

One witness was a huckster, one a carpenter and one a stableman, who were all away from home and at business at the hours when a sale would probably be made (579, 582, 590). Three were married women who claim to have lived within sight of the property, but only one of whom professes ability to say positively that no sale was had (383, 384, 391). Another woman swears that she lived near the property (592), but she had in fact removed from the neighborhood some weeks before the sale (622).

As all this testimony was taken more than ten years after the sale, it would be remarkable if any of these persons should remember the sale. Only two of them had even the slightest interest in the property, the complainant and her uncle, who was a brother of complainant's mother. The former was only thirteen years old at the time of the sale, and lived three or four squares away (576), and shows that she knew nothing at all about her mother's affairs. The uncle, likewise, was ignorant of his sister's business, as appears from the fact that he had never heard of the deed of trust (691), the existence of which is averred in complainant's bill (563). It may be inferred from these facts that the deceased did not inform her relatives of her affairs, and their failure to remember a sale is of no significance whatever.

On the other hand, Mr. McIntire and his two sisters swear to the fact that a public sale was made and that they were present (616, 628, 645). The bill of the auctioneer, who died before the suit was brought, was produced, and shows a charge for the sale of this property at the date alleged (10, 14). It is also shown that complainant's mother, Barbara Brown, who is alleged to have been wronged by McIntire's secret sale to Emma Taylor, joined with Emma Taylor in a deed, made about three weeks after sale, conveying the property to Martha

McIntire. It is nowhere suggested that Mrs. Brown's signature was forged or that she was induced to execute this deed by fraudulent means, and the fact that it was witnessed by her attorney, Mr. Peugh, excludes the probability of imposition (707).

It is true that the court below, in its opinion (7 App. D. C. 437), animadverts upon an erasure in this deed and intimates a suspicion of alteration. But the attestation clause of the deed recites that the name of the grantee was written over an erasure, and the whole matter is fully explained in the testimony (650). It is apparent that the court was really controlled by its belief that Emma Taylor was a fictitious person, and its idea that the McIntires were to be presumed wrong-doers. That court even then felt it necessary to aid the evidence by finding that "Barbara Brown was evidently a woman of little education or business qualifications"; matters on which *there is no proof at all.* It appears that Mrs. Brown could read and write, and her brother testifies that she had acquired "a keg of gold" by domestic service and keeping a stall in the market (693). It is also suggested by the court below that the rent of the property was more than enough to meet the interest. It seems that the house rented for $6 a month. Mr. McIntire collected the rents for a part of the time, but they were not always collectable, and none of them were applied to the payment of interest on the loan (641, 642). There was, at the same time, a second trust of $600 on the property, making a total incumbrance of $1,000, bearing ten per cent. interest, which was considerably in excess of the rents. It is clear that no fraud is proven in this case.

In *Ackerman* v. *McIntire*, the complainant, Mrs. Ackerman, seeks to vacate a deed made by herself, conveying a lot to Emma Taylor, and a subsequent deed from Emma

Taylor to Martha McIntire. The charge is that complainant placed the property for sale in the hands of E. A. McIntire; that he sold it for less than its value and failed to account for the proceeds, and that complainant was imposed upon through her ignorance of business.

It appears that complainant conveyed the property to Emma Taylor by a deed, dated April 25, 1882, expressing a consideration of $300 (812), and that she afterwards, in September, 1884, executed a quitclaim to Martha McIntire, who had acquired Emma Taylor's title (811). That McIntire paid complainant $300 by one check (760, 810) and $26.45 by another (761, 791, 810), and that complainant was obliged to return a portion of this money to clear the property of certain liens for taxes, water rents, and the like. Complainant charges that she received only $75 as net proceeds, but it is shown that at about the same time she was engaged in a suit against her husband for divorce, and in a cross-bill filed in that suit she admitted having received $175 for this same property (737, 743).

There is no proof whatever to show that the property was worth more than $300, except that one witness thinks that an offer of $600 or $800 was made for it by some man whom he did not know (744). It is shown that complainant had offered the house for $300 or $400 and failed to sell at that price (776). Complainant swears that one Mr. Wood told her to see Mr. Bieber, and that Mr. Bieber would buy the house for $500; that she took Bieber to McIntire's office, and was told that it was already sold (732); but she does not say that Bieber offered her $500, and Bieber was not called as a witness.

It appears, on the other hand, that the property was a lot in the southeastern part of the city, on an unpaved street, and 12 or 15 feet above grade The lot was 17

feet wide and the house was 13 feet wide, two stories in height, and contained four rooms, each of which was occupied by a negro family (766). There was no water in the house (809), and complainant says, "I wanted to get rid of the house because I heard there was something the matter with it." "I do not suppose I would have sold it only the agent informed me that it was defective, and somebody was coming there after money—something wrong about it, and I thought it was a great trouble" (734). Again, she says that she was persecuted every day "on account of something to be paid, water or something, some tax" (740). And again: "There was some debt, I do not know what it was, that troubled me. It made me anxious to get rid of it. Whether it was water or something else I do not know" (742). Complainant's letters, written shortly before the sale, show that she had nothing but worry from the house, and she said, "I would like to sell, as it will never be any profit to me to keep the house" (808, 809, 810). It appears, also, that she needed money immediately for her divorce suit, and insisted upon selling at once for cash, and would not allow McIntire to advertise or to await a more propitious season for sale (760, 761).

As the bill in this case was filed almost nine years after the sale, the complainant had forgotten almost everything except her impression that she did not get as much money as she wanted. She does not remember signing the deed (732), and admits that she accepted McIntire's explanation of the charges on the property without attempting to understand it (733). Her testimony is full of similar slips of memory and like admissions of carelessness at the time, and no attempt whatever is made to account for her nine years' delay in seeking redress for what she then, without understanding it, regarded as a grievance. No pretense

is made of proving that the charges on the property were less than those stated by McIntire or that he made any misrepresentations as to other matters. The court below appears to have found no fraud except in the fact that complainant's first conveyance was to Emma Taylor, who was pronounced by the court to be a fictitious person. (7 App. D. C. 443.)

In *Hayne* v. *McIntire*, as in the Brown case, the charge is that E. A. McIntire, being trustee under a deed of trust given by Laura Hayne, sold the property to Emma Taylor privately and without holding a public sale as prescribed by the deed. It is not denied that the complainant was in default and the property liable to be sold, and the only complaint is that the sale was not at public auction.

To prove this charge several witnesses were introduced who professed to live near the property at the date of the sale and who fail to remember that such a sale took place. One of these witnesses who swore positively that she lived in the house at the date of the sale was shown to have been mistaken, the fact being that she did not lease that house until several weeks afterwards (927, 959, 1012). Another was at the time a girl seven years old and attended school (934). The others were housewives living in the neighborhood who admit much engrossment in domestic duties and occasional absences. The sale took place in August, 1882, and all this evidence was taken in September, 1891, and none of the witnesses were at all interested in the property. It would be a matter of surprise if any of them had recalled the sale of nine years before.

The fact of the sale is positively sworn to by two sisters of Mr. McIntire and himself, who were present, and the bill of the auctioneer, since deceased, shows a charge for selling this property. The fact that such a sale was

advertised in a public newspaper is shown by the witness whom complainant's counsel employed to search the newspaper files (972), though he had previously and before a copy was adduced professed his inability to find it (938). It is shown also that the complainant's husband, who had acted as her agent in the matter, was fully apprised of McIntire's intention to sell the property, had repeatedly asked for and obtained delay, and was finally advised that the property was sold, all nearly nine years before the bill was filed.

The opinion of the Court of Appeals asserts fraud on the part of McIntire, but does not specify wherein such fraud consists (7 App. D. C. 449). Apparently the only fraudulent feature of his conduct, in the mind of the court, was the introduction of Emma Taylor as vendee, she being assumed to be a myth.

In *Southey* v. *McIntire* the court below found no fraud, and the case requires no further consideration (7 App. D. C. 447).

While counsel for appellants have thus indicated as accurately as possible the nature of the simultaneous litigations which the counsel for appellee insisted upon injecting into this record, and while it is not apprehended that anything will be found in the voluminous supplement to the Pryor record to prejudice the appellants, it is not improper to remark that none of this extraneous matter can properly be said to bear upon any of the issues now before this court. The stipulation in the case at bar provided for the reading of the testimony in the other cases "so far as the same may be relevant to the issues raised in this case" (423). The only possible value to the appellee of the evidence in the four other cases, if believed, would be to argue therefrom that in those cases Mr. McIntire and his sisters were guilty of divers alleged fabri-

cations, impersonations and mistatements. The theory of opposing counsel, as developed in briefs filed below, is that fraud and forgery in this case may be proved by charging fraud and forgery in other entirely independent instances, and reliance is placed upon the cases of Castle *v.* Bullard, 23 How. 186, and Lincoln *v.* Claflin, 7 Wall. 138. These cases, however, only hold that evidence of collateral acts of fraud may be shown to prove a fraudulent *intent* in the specific case under examination. In one case such evidence was received to show that a firm of commission merchants sold the plaintiff's goods to an insolvent, knowing the vendee's insolvency. In the other, evidence of other purchases with intent to defraud was received to show a like intent in the particular case on trial. But here the question is one not of subjective intent but of objective fact. The charge to be proved is that Mr. McIntire committed forgery, made false personations, and told deliberate falsehoods. If such facts are proved, there is no room for question as to his intent; it was incumbent on the complainant to establish the specific facts, and the intent would have taken care of itself. No court of justice ever held that one forgery can be proved by proof of another, any more than one burglary can be established by evidence of another. There is no possible excuse for the unconscionable enlargement of this record by the appellee, to the grievous expense of appellants, merely for the sake of casting suspicion upon transactions utterly irrelevant. It is submitted, therefore, that whatever may be the action of this court upon the case appealed, the costs of the supplemental records should be taxed against the appellee.

R.R. Co. *v.* Schutte, 100 U. S. 644.

The incompetency of this evidence is clearly pointed out by Mr. Justice Hagner (494).

We have now laid before the court the evidence in all the cases, with comments on the same, and having no doubt that the counsel for complainant will resort to the same method of attacking the appellants in his argument before this court as was resorted to in the court below, we refer to some of the aspersions that were cast in argument in the court below upon the appellants' credibility. In that court counsel for appellees did their utmost to strengthen their case by what Mr. Justice Hagner characterized as "the furious and unceasing denunciation of the McIntires upon every point" (496).

Comment was made on the fact that some of the deeds involved in these cases were not recorded for various periods after their execution, and this was relied upon as a badge of fraud. A contrast was instituted between certain deeds admitted by complainants to be *bona fide*, which were recorded promptly, and some of which recordation was delayed and which were therefore stigmatized as fraudulent. Of the deeds not promptly recorded, one was left unrecorded for nine months, another ten months, another two years and five months, another six years and seven months, two were never recorded, and one not until after this litigation was begun. So far as concerns the first three, the delay was by no means unusual. One of the others was the deed from Barbara Brown and Emma Taylor to Martha McIntire, which was denounced as a forgery, but which happens to have been attested by Harleston and Peugh, who swore to its genuineness as above stated. The remaining three were deeds to Martha McIntire, who seems to have been ignorant of the recording law (754, 755). One of the deeds charged to be fraudulent because of delay in recording was that of E. A. McIntire to Hartwell Jenison, made in June, 1881, conveying the Pryor property under the foreclosure sale.

But this was evidently a *bona fide* deed, and Jenison's failure to have it recorded is not evidence of fraud on McIntire's part. Why a like delay on the part of Miss McIntire should suggest fraud is not at all clear.

Again, in previous arguments, stress was laid upon the fact that Mr. McIntire had not preserved, and could not produce, books, letters, checks and other paper evidence of all the multitudinous and multifarious details involved in these five cases, and that he and his sisters could not remember all of a great number of matters of fact connected with the old transaction in question. In a brief, applying to all the cases, and filed in the Court of Appeals, ingenious and laborious counsel devoted about 40 pages to comment upon these points, and under the caption "E. A. McIntire as a Non-Mi-Recordo Witness" four pages were employed to collate the points, scattered through the thousand pages of the record, as to which he could not positively testify. Although a repetition of that line of argument is anticipated, counsel for appellants will not undertake to meet it at any great cost of time or paper.

These suits were brought from nine to fifteen years after the transactions complained of, and the taking of testimony ran on until March, 1894. This was nearly 13 years after the supposed cause of action in the Pryor case originated. It would be strange indeed if Mr. McIntire, who appears to have been actively engaged in a large business, involving many details, had preserved all, or indeed any, of his records and other papers in settled cases for a dozen years. The transactions in question were all of minor importance, one might almost say insignificant, no one of them involving property worth more than $2,000 or $3,000. It is shown that some of Mr. McIntire's papers were destroyed by a fire, and that others were lost,

destroyed or confused in the removal of his office from one location to another. The Court of Appeals expressed doubt as to the fire, but, even leaving that question aside, the removal of the office, the lapse of time, and the natural inattention to papers bearing upon trifling and completed business remain as sufficient to account for the loss and destruction of papers. The United States Government, with all its powers, has not been so successful in preserving papers and records that a private individual ought to be criticised for sometimes failing. It will be observed that the title deeds were preserved, even when not recorded, and quite as much of the contemporary correspondence and other documents are produced as could be reasonably expected. It will be observed that, on the other hand, the complainants in these cases produced *practically no papers at all.* Why Mr. McIntire should be held to a stricter accountability for the presentation of papers than the other parties is not explained.

When we come to failure of memory, honors are at least easy between the McIntires and their adversaries. The worthlessness of the testimony offered by complainant in this case, the failures to recollect, and self-contradictions of her witnesses have been already pointed out, while as for Mrs. Pryor herself, her faculty of oblivion is really marvelous. (See opinion of Hagner, J., p. 496.) If Mr. McIntire and his sister, whose interests in any of these properties were comparatively slight, had remembered the details of the various sales and purchases better than the original owners, who lost apparently their only property by the alleged frauds, they would have marvelous memories, surpassing the professors of mnemonics.

Briefly adverting to some of the failures of memory relied upon in former arguments, we submit that it is not strange—viewed apart from invective and prejudice—that,

after the lapse of ten years, witnesses could not accurately fix the age of Emma Taylor, or could not remember whether they had seen her two, three, or four times, or had forgotten the year in which each of two or three safe-deposit boxes were rented, or were uncertain whether they had seen a certain one of a dozen deeds signed, or were unable to say whether a certain payment was made by cash or by check. Among the failures of Mr. McIntire's memory which were trumpeted forth as suspicious were the facts that he did not recall whether he got a deed from the recorder's office or sent a clerk for it; that he could not say what had been written and erased under a word in a deed; that he had forgotten whether he collected the rent of certain small houses at certain periods; that he did not remember the street and number of Emma Taylor's residence, and that he failed to recall why a certain consideration was recited in a certain deed ten years old. Miss Martha McIntire was regarded as subject to suspicion because she could not go back over a period of thirty or forty years and identify by date, amount, and origin the several increments of her fortune, or recall how many bonds and of what denomination she sold at a certain date twelve or fifteen years before, or how much money she kept at each of several banks at various dates.

Doubtless the same derogatory analysis of appellants' testimony will be presented to this court, and we submit in advance that it would have been really a suspicious circumstance if these witnesses had been ready with answers to all the questions like these. Miss McIntire shows very clearly that she had means amply sufficient to enable her to buy this property (118, 119, 121, 129, 131, 133, 443, 444, 464, 465, 466). Both she and her brother are corroborated by other witnesses as to every material

fact, and remember everything which persons of normal memory should be expected to recall after the lapse of a decade. And the fact which was made the turning point of all these cases, the existence of Emma Taylor, is as fully established as the existence of an absent human being could possibly be. On such a point it is proverbially hard to overcome a determined and hostile skepticism. A noted author once made, for the sake of illustration, a strongly plausible argument that Napoleon Bonaparte never existed.

III.

No Grounds of Equity Interference Stated in the Bill.

The propriety and regularity of the sale of June 17, 1881, are not questioned. It is admitted that the deed of trust to secure Jenison $450 was valid and that the money was actually loaned to the complainant. There is no pretense that she ever paid or offered to pay a penny upon this debt, either before the sale or in the nine years intervening between that event and the institution of this suit. Both the original and the amended bill aver that the note was "overdue and unpaid" (2, 7).

Nor is any question made as to the fact that McIntire, in selling the property, was acting under the positive direction of Jenison, the party secured. McIntire's testimony on this point is fully corroborated by Jenison, and the written order under which the sale was made is put in evidence (43, 430). The averment in the original bill (3) that the property was bought in Jenison's name and a deed made to him without his knowledge or consent, is emphatically denied by Jenison himself in his answer and in his testimony, to which reference has heretofore been made. Jenison was fully advised of the facts throughout,

and even now is entirely satisfied with Mr. McIntire's conduct (41, 46, 396, 399).

It is true that Mr. Jenison had forgotten many of the details of the business, and apparently, from this fact alone, the Court of Appeals drew the inference that Jenison was a credulous old man. Jenison was at the time the chief of an important division in the Treasury Department and only sixty-one years of age (401). He shows no indications of senile debility, unless inability to recall long forgotten details can be so considered, and in this respect he is at no greater disadvantage than the other witnesses, and particularly the complainant.

It may be remarked, too, that the bill is not brought by Mr. Jenison. On the contrary, he was made a party defendant, and he expresses no dissatisfaction with the transactions complained of by Mrs. Pryor. The court is, therefore, not called upon to redress any wrongs to him, and there is no need even to inquire whether he was injured in any way.

The only claim made is that Mrs. Pryor was deceived and defrauded by a promise of Mr. McIntire that her husband should be allowed to buy the lot and pay for it by monthly instalments. Assuming every fact alleged to be fully proved, she is even then entitled to no relief.

In the first place, there was no consideration for the alleged promise, and the Pryors are in no worse condition than if it were not made. The property was going to be sold, and they had no means to prevent or delay the sale. They gave nothing for the promise, and the sums that they afterward paid were no more than the rent which they had been paying before.

In the second place, McIntire had no right or authority to make such a promise. He was a mere trustee, and his powers, strictly circumscribed by the deed of trust, ex-

tended only to making the sale and executing a deed to the purchaser. This fact Pryor knew, or was bound to know, and no deception could be imputed to McIntire, from the fact of making the promise alleged. If McIntire ever made such agreement it was in a character distinct from that of trustee, and his keeping or breaking the contract was entirely collateral to the trust.

Assuming, however, that McIntire made an agreement such as is alleged, Mrs. Pryor fails to show that it was performed on her part or that of her husband. She does not pretend that they paid the purchase price or ever paid the rent for the period during which they occupied the property. The most that she can say is that they paid "a good deal, over $72 of rent, but I disremember" (25), and the receipts which she produces show an aggregate of only $90 paid in twenty-one months after the sale (424). From August, 1882, to March, 1883, no payments appear, and after the latter date nothing at all was paid, although complainant claims to have remained in possession of the property until September, 1884. Mrs. Pryor admits that her husband did not have $100 to make the deposit required by the terms of sale (25), and shows that her husband had not a dollar to carry on his business (23).

It is entirely immaterial in this case, therefore, what, if any, agreement McIntire made with Pryor. It will scarcely be contended that, after the Pryors had failed to make the payments agreed upon, and had surrendered the property, McIntire was bound to make them a title, and it is no less absurd to say that after their failure and abandonment, McIntire and his vendees were bound to hold the property in trust for Mrs. Pryor until, after the lapse of ten years, she could compel them to let her redeem it out of the rents and profits.

Finally, whatever fraud may have been committed, Mrs. Pryor was not affected by it, and cannot complain of it. Her title was completely and regularly divested by the sale under her deed of trust. The alleged agreement, if made at all, according to her own statement, was with her husband and not with her. Upon his death, his wrongs and his remedies therefore devolved upon his heirs or personal representatives, and she is neither.

It is accordingly submitted that even accepting Mrs. Pryor's allegations as proved, she has no claim for the redress of wrongs. With frauds, if there be any, practised upon other persons, she has no concern, and no one else now seeks relief on account of such supposed frauds.

The existence or non-existence of Emma Taylor therefore becomes quite immaterial. If she was a figment of McIntire's mind, the most that can possibly be said is that Jenison's deed to her is void and the title to the property remains in Jenison. This fact does not affect Mrs. Pryor's case or entitle her to any relief. The name of Taylor was not introduced into the transactions until after Mrs. Pryor had lost her title through a regular sale under a valid deed of trust. If the use of Emma Taylor's name was a fraud, it does not reach back of Jenison's deed to her, and certainly the valid sale was not annulled by a subsequent fraud in relation to the property.

Granting even for the sake of argument that Emma Taylor was an alias of McIntire's, the supposed fraud was upon Jenison, and could afford Mrs. Pryor no grounds of complaint. Had McIntire taken a conveyance to himself under an assumed name while he was trustee under Mrs. Pryor's deed, some connection might be perceived between such a fraud and her loss of her property. But here it is not denied that everything under that deed was properly conducted, and McIntire's trusteeship for Mrs.

Pryor ceased when he made the deed to Jenison on June 28, 1881, the validity of which is not questioned. McIntire was certainly then divested of his character as trustee and *functus officio*, so far as concerned the Pryor trust. The Emma Taylor deed was not made until April 19, 1882, nearly ten months later.

Furthermore, it is perfectly obvious that, if Mr. McIntire really desired to get this property under his control, it was entirely unnecessary for him to resort to the awkward and dangerous device of inventing a fictitious person such as Emma Taylor is alleged to be, thereby merely necessitating subsequent forgeries and personations. There was no reason why the title should not have been taken in the name of his sister, who is charged with the signing of Emma Taylor's name, and who might as well have used her own. If Emma T. McIntire was willing to lend her pen to assist her brother, she was certainly willing to lend her name, and the introduction of a pseudonym was an utterly gratuitous and ridiculous device.

If, then, Miss Emma T. McIntire were, as is charged, the real Emma Taylor, then Emma Taylor was not a fictitious person, but the assumed name of an actual being. The deeds, therefore, are not void or even voidable. A deed to a person under an assumed name conveys title, as was held in the case of Colorado Coal Co. *v.* United States, 123 U. S. 307, 317.

The result is that, in any view of the case, the decree below was erroneous.

IV.

Complainant is estopped from setting up any claim by reason of her delay and acquiescence.

The time which elapsed between the acts complained of and the filing of the several bills is as follows:

In the	Pryor	case	9	years and 4 months.
" "	Brown	" about	10	"
" "	Ackerman	"	10	"
" "	Southey	" "	15	"
" "	Hayne	" "	9	"

Nine years and four months were allowed to pass after the sale complained of before any steps were taken by the complainant Pryor towards setting it aside. Six years and four months elapsed after Miss McIntire acquired title, and nearly four years after she commenced building on the lot; although complainant knew about the sale and the building going on.

She testifies that she met Mr. McIntire in Judiciary Square shortly after the sale in 1881 and intimated to him in a vague way that she felt aggrieved about it (23), as people generally do at such times. She also told the builders who were erecting the houses on the lot that she had been defrauded (55). So that she had the subject fully before her mind, to decide whether she would sue or not.

The only excuse offered for the long delay in bringing suit is the averment in the bill that "complainant has only recently discovered" that the sale of the lot in 1881 was made by McIntire in his own interest and that a deed had been made to Jenison (8). By her own testimony it appears that there existed no excuse or reason for her not

having commenced her proceedings in proper time. But on this point it is submitted that there never was any reason, nor the intention, on the part of complainant, to seek to set aside the sale, and it only occurred to her, after she had been led to believe she might get considerable money by reason of the property having enhanced in value, both on account of the growth of the city and the improvements put thereon by Miss McIntire.

If we should be mistaken in this opinion, which is formed from an examination of the records in these cases, and if the complainant acted in good faith, even then she is not entitled to relief, for courts of equity require great diligence on the part of persons in discovering their rights in reference to real estate, and delay of the kind shown in this case is not susceptible of explanation or excuse upon such frivolous statements as those relied upon by this complainant.

This court, in Hammond *v.* Hopkins (143 U. S. 251), says:

"No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence, but will discourage stale demands for the peace of society, by refusing to interfere where there have been gross laches in prosecuting rights, or where long acquiescence in the assertion of adverse rights has occurred. The rule is peculiarly applicable where the difficulty of doing entire justice arises through the death of the principal participants in the transactions complained of, or of the witness or witnesses, or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible;" and further:

"It is conceded that the proposition that where a trustee, or person acting for others, sells a trust estate and becomes himself interested in the purchase, the *cestuis que trustent* are entitled, as of course, to have the purchase

set aside, is subject to the qualification that the application for such relief must be made within a reasonable time, and that laches and long acquiescence cannot be excused except by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor."

It seems to us that no better argument can be made in these cases on the subject of laches than to beg the attention of this court to the careful and able opinions of the learned judge who decided the cases in the first instance in the court below at special term, on hearing and rehearing. They are most conclusive and satisfactory on the subject (record in Pryor case, 470, 485). We copy here the authorities cited and relied on by him for convenience of reference:

McKnight *v.* Taylor, 1 How. 161.
Stearns *v.* Page, 7 How. 829.
Hoyt *v.* Sprague, 103 U. S. 636.
Hammond *v.* Hopkins, 143 U. S. 251.
Galligher *v.* Caldwell, 145 U. S. 373.
Foster *v.* Mansfield, 146 U. S. 99.
Johnston *v.* Mining Co., 148 U. S. 370.
Lane *v.* Locke, 150 U. S. 201.
Halstead *v.* Grinnan, 162 U. S. 416.
Harwood *v.* Railroad Co., 17 Wall. 78.
Twin Lick Oil Co. *v.* Marbury, 91 U. S. 587.
Brown *v.* Buena Vista Co., 95 U. S. 157.
Hayward *v.* National Bank, 96 U. S. 611.
Holgate *v.* Eaton, 116 U. S. 33.
Davidson *v.* Davis, 125 U. S. 90.
Société Fonciere *v.* Millikin, 135 U. S. 304.
Oliver *v.* Gray, 1 H. & G. 204.
Clabaugh *v.* Byerly, 7 Gill, 364.

White *v.* White, 1 Md. Ch. 53.
Hitch *v.* Fenby, 6 Md. 218, 224.
Glenn *v.* Hebb, 17 Md. 260.
Nelson *v.* Bank, 27 Md. 51.
Hill *v.* Clagett, 48 Md. 223.
Amey *v.* Cockey, 73 Md. 305.
Godden *v.* Kimmell, 99 U. S. 201.
Richards *v.* Mackall, 124 U. S. 186.

In addition to the authorities above cited, we invite the attention of the court to the case of Willard *v.* Wood, 164 U. S. 502–524, and to the case of Whiting *v.* Fox, 166 U. S. 637, and the late case of Baker *v.* Cummings, 169 U. S. 189.

If it should be argued that the present case is one of an express trust, and, for that reason, the rule of laches does not apply, our reply is that this is not a case of an express trust, and even if it were, the doctrine of laches does apply.

Preston *v.* Horwitz, 85 Md. 164.
Hanson and wife *v.* Worthington, 12 Md. 441.
Whiting *v.* Fox, 166 U. S. 637.

It may be contended, as it was in the court below, that the complainant was an ignorant colored woman, not acquainted with the business transactions of life, and the rule should not be applied to her. But we submit that the record shows that she, or those behind her in this matter, were not slow to grasp the situation, and were shrewd enough to postpone this action, until lapse of time has placed the McIntires at a great disadvantage. But however this may be, yet there is no escape from the rule of laches, for neither poverty, illiteracy nor ignorance of the law excuses laches.

Lens *v.* Kengla, 8 App. D. C. 239.
Leggett *v.* Standard Oil Co., 149 U. S. 294.
Hayward *v.* Bank, 96 U. S. 611.
McQuiddy *v.* Ware, 20 Wall. 14.
Naddo *v.* Bardou, 47 Fed. Rep. 788.
De Estrada *v.* Water Co., 46 Fed. Rep. 280.

The lapse of time has aided the appellee through the death and disappearance of witnesses, the loss and destruction of papers, etc.; but it has also brought with it the countervailing bar of the doctrine of laches. "The hour-glass must repair the ravages of the scythe."

It is submitted that the decree appealed from is wrong, and should be reversed, and the bill be dismissed.

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No. 109.

Supp. to Brief for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Jan. 7, 1899.

No. 109.

Edwin A. McIntire and Martha McIntire, Appellants,

vs.

Mary C. Pryor.

Appeal from the Court of Appeals of the District of Columbia.

Opinion of Mr. Justice Hagner in the Supreme Court of the District of Columbia,

ALSO

Opinion of Mr. Justice Shephard in Court of Appeals D. C.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

IN THE

Supreme Court of the District of Columbia.

MARY C. PRYOR *v.* E. A. MCINTIRE, Equity, No. 12,761.

ELIZABETH BROWN *v.* E. A. MCINTIRE, Equity, No. 12,977.

ANNIE M. ACKERMAN *v.* E. A. MCINTIRE, Equity, No. 12,978.

CATHARINE SOUTHEY *v.* E. A. MCINTIRE, Equity, No. 13,034.

LAURA HAYNE *v.* E. A. MCINTIRE, Equity, No. 13,177.

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For Defendants.

Opinion of Justice Hagner.

These five cases have been heard together. The bill in the earliest case, the suit of Mary C. Pryor, was filed the 21st of October, 1890; the others at intervals up to the 12th of May, 1891.

Edwin A. McIntire is a defendant in each case, Martha in all the cases except that of Hayne, Emma Taylor in Pryor's, Brown's, and Ackerman's, Jenison to the Pryor bill, and Brouner in the Brown case.

Answers were filed by all these defendants to the original and amended bills except by Brouner and by Emma Taylor. An order of publication was passed in two of the cases against Emma Taylor, but there is nothing to show it was ever published, and no decree *pro confesso* was ever obtained against her.

Against Brouner no further proceedings seem to have been taken beyond making him a defendant to the Brown bill.

A large amount of testimony was taken in each case, all of which with reference to the McIntires and to Emma Taylor it was stipulated might be read in each suit, subject to just exceptions. As a result the mass thus applicable to each case is unusually large, and its proper adaptation to the particular issues became a matter of considerable difficulty.

In the view I have felt compelled to take of the entire litigation it has become unnecessary to point out here in detail the application of the accumulated testimony to the many points of contention or to announce a decision upon the numerous and somewhat intricate questions of evidence presented in the course of the arguments, and I shall refer to the testimony only so far as may be requisite to the examination of what I consider the indispensable preliminary question in the controversy, which is whether the complainants have been guilty of unreasonable delay under the circumstances in the assertion of their supposed rights; and, if this be so, whether they have presented satisfactory explanations and excuses for whatever laches in the prosecution may be found to exist.

This inquiry properly meets us at the threshold of the investigation, since the exercise of proper diligence in the prosecution of rights is the condition universally annexed to the right to relief in courts of equity. Familiar as this principle is, it may assist in the examination to recall here the language in which it has been expressed by the courts of the highest resort:

"Equity discountenances stale and antiquated demands, for the peace of society, by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights. It is not merely in analogy to the statute that a court of equity refuses to lend its aid to stale demands, but there must be conscience, good faith, and reasonable diligence to call into action the powers of this court. When these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced."

(McKnight *vs.* Taylor, 1 How., 161.)

Wherever such delay appears on the face of the application it then becomes necessary, as expressed in 2 Wall., 87, Badger *vs.* Badger, that "the party who makes such an appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondents to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer."

In 7 Howard (829), Stearns *vs.* Page, Justice Grier said: "But as lapse of time necessarily obscures the truth and destroys the evidence of past transactions, courts of chan-

cery will exercise great caution in sustaining bills which seek to disturb them. They will hold the complainant to stringent rules of pleading and evidence and require him to make out a clear case. Charges of fraud are easily made, and lapse of time affords no reason for relaxing the rules of evidence or treating mere suspicion as proof. If a defendant can be compelled to open settled accounts to explain or prove each item, after a lapse of near thirty years, by general allegations of fraud—if the fraud can be proved by his inability to elucidate past transactions after so great a length of time, or by showing some slips of recollection, or by contradicting him in some collateral facts by the frail recollection of other witnesses—no man's property or reputation would be safe."

"A complainant seeking the aid of a court of chancery under such circumstances must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment—must specify how, when, and in what manner it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. If a mistake is alleged, it must be stated with precision and made apparent so that the court may rectify it with a feeling of certainty that they are not committing another and perhaps greater mistake, and especially must there be distinct averments as to the time when the fraud, mistake, misrepresentation, or concealment was discovered and what the discovery is, so that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been before made."

In 103 U. S., 636, Hoyt *vs.* Sprague, the court remarks: "In such cases it is not merely a question as to what information respecting their rights parties do actually obtain, but as to what information they might have obtained had they used the means and opportunities directly at their

command. Others, acting in good faith, also have rights—the world must move, and it is the interest of the community that controversies should have an end."

These principles have received further enforcement from the more recent decisions of the Supreme Court, commencing with the case in 143 U. S., 251, Hammond *vs.* Hopkins, where the antecedent cases received a careful examination. There can be no doubt the courts everywhere, of recent years, have shown an increasing disposition to listen to the defense of laches, and the citations I shall read from the latest reports of the Supreme Court afford convincing proof of this statement. These cases, says the Supreme Court in 145 U. S., 373, Galliher *vs.* Cadwell, "all proceed upon the theory that laches is not, like limitations, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relation of the property or parties."

In 146 U. S., 99, Foster *vs.* Mansfield R.R. Co., Justice Brown says: "The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove, and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law, which demands not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts. Especially is this the case where the party complaining is a resident of the neighborhood in which the fraud is alleged to have taken place."

Again, in Johnston *vs.* Standard Mining Co., 148 U. S., 370, the same justice says: "While there is no direct or positive testimony that plaintiff had knowledge of what was taking place with respect to the title or development

of the property, the circumstances were such as to put him on inquiry, and the law is well settled that where the question of laches is at issue the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known to him were such as to put upon a man of ordinary intelligence the duty of inquiry."

In 150 U. S., 201, Lane *vs.* Locke, the court said speaking by Mr. Justice Shiras: "Courts of equity, it has often been said, will not assist one who has slept upon his rights and shows no excuse for his laches in asserting them. The plaintiff's excuse in this instance that he preferred from prudential reasons to receive a salary from the defendant rather than to demand a royalty is entitled to a less favorable consideration by a court of equity than if his conduct had been that of mere inaction."

These cases are cited with approval by Mr. Justice Brewer in the most recent utterance of that court on the subject, 162 U. S., 416, Halstead *vs.* Grinnan. The courts, too, have relaxed the older rule that laches is admissible as a defense only where the delay has been very prolonged. Adhering to the declaration that "each case must stand upon its own peculiar circumstances," they have, more especially of late years, sustained the defence in some cases where the delay has fallen short of the time fixed by the statute for suits at law.

This disposition of the courts is illustrated in 145 U. S., 373, Galliher *vs.* Cadwell. "The laches of the appellant," says the court, "is such as to defeat any rights which she might have had, even if these prior questions were determined in her favor; and in this respect it is worthy of notice that there has been in a few years a rapid and vast change in the value of the property in question. It is now an addition to the city of Tacoma.

The census of 1880 showed that to be a mere village, the population being only 1,098. The census of 1890 discloses a city, the population being 36,006. Of course such a rapid increase during this decade implies an equally rapid and enormous increase in the value of property so situated as to be an addition to the city, and the question of laches turns not simply upon the number of years which have elapsed between the accruing of his rights, whatever they were, and her assertion of them, but also upon the nature and evidence of those rights, the change in value, and other circumstances occurring during that lapse of years. The cases are many in which this defense has been invoked and considered. It is true that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed upon the assumption that the party to whom laches is imputed has knowledge of his rights and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned, and that because of the change in condition or relations during this period of delay it would be an injustice to the latter to permit him to now assert them. A reference to a few of the cases in our reports may not be out of place. In Harwood *vs.* Railroad Co., 17 Wall., 78, a delay of five years on the part of the stockholders in a railroad company in bringing suit to set aside judicial proceedings regular on their face, under which the railroad property was sold, was held inexcusable. In Twin Lick Oil Company *vs.* Marbury, 91 U. S., 587, a director of a corporation who had loaned money to it and subsequently bought its property at a fair public sale by a trustee was protected in his title against the corporation,

suing four years thereafter to hold him as trustee of the property for its benefit, it appearing in the meantime the property purchased had increased rapidly in value. In Brown *vs.* County of Buena Vista, 95 U. S., 157, a county was held barred by its laches from maintaining at the end of seven years a suit to set aside a judgment fraudulently obtained against it, and that, too, though it did not affirmatively appear that the supervisors of the county had knowledge of the existence of the judgment till about twenty months before the commencement of the suit. In Hayward *vs.* National Bank, 96 U. S., 611, a party who had borrowed money of a bank and deposited with it as collateral security certain mining stocks, which were sold by the bank upon his failure to repay the loan, was held barred by his laches in a bill to redeem, filed four years thereafter, the stocks in the meantime having greatly increased in value. In Holgate *vs.* Eaton, 116 U. S., 33, a married woman who, on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiated it and refused for two years to perform it, was not permitted thereafter to maintain a bill for specific performance of the contract, the value of the property having depreciated. In Davidson *vs.* Davis, 125 U. S., 90, a bill to compel the specific performance of a contract to sell personal property upon the payment of a promissory note, payable at a date after the making of the contract, was dismissed on the ground of laches of the complainant in waiting five years after the maturity of the note before filing his bill, the property in the meanwhile having increased in value. In Societé Foncieré *vs.* Milliken, 135 U. S., 304, a delay of two years in the commencement of proceedings to set aside a judgment for usury was adjudged fatal, the amount of the usury being small and the judgment having been

enforced in the meantime by the sale of real estate." "But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of the inequity of permitting the claim to be enforced; an inequity founded upon some change in the condition or relations of the property or the parties."

To these citations by the court may be added the cases of 103 U. S., 636, Hoyt *vs.* Sprague, where relief was refused to two complainants who had respectively neglected to sue for nine and seven years after they had become of age, and 148 U. S., 370, Johnston *vs.* Standard Co., where relief was refused after delay of six years.

Several rulings of this description are found in the Maryland Reports which are deserving of particular notice, as the courts of that State have consistently adhered to the liberal application of the statute of limitations in actions at law laid down nearly forty years ago in 9 H. & G., Oliver *vs.* Gray, which treated that enactment as creating a presumption of payment, which might be rebutted by acknowledgment that the debt was really unpaid, although such acknowledgments have been held insufficient for the purpose by the Supreme Court, which construed it as a statute of repose in Bell *vs.* Morrison. Nevertheless the chancery courts of Maryland afford many decisions supporting the defense of laches after short periods, as in Clabaugh *vs.* Byerly, 7 Gill, 364, where relief was refused on a bill filed in February, 1844, to set aside a deed executed in 1842; in White *vs.* White, 1 Md. Chancery, 53, where the transaction occurred in 1840 and the bill was filed in 1846; in Hitch *vs.* Fenby, 6 Maryland, 224, where there had been a delay of seven years; in Glenn *vs.* Hebb, 17 Maryland, 260, after four years; in Nelson *vs.* Hagerstown Bank, 27 Md., 51, after five years;

in Hill *vs.* Clagett, 48 Maryland, 223, on a bill filed in 1856 by a surviving partner against the representatives of a deceased partner, who died in 1856, for a settlement of copartnership dealings; and in 73 Md., 305, Amey *vs.* Cockey, on a bill filed by a widow to set aside a deed less than five years after she had a right to sue.

In applying these principles to the cases before us it is proper first to consider the extent to which the several plaintiffs have observed the injunction that "conscience, good faith, and reasonable diligence must appear to call into action the powers of an equity court."

The bill asks in somewhat different forms for an accounting from Edwin A. McIntire for the proceeds of the several lots sold by him for the different owners; for an account from him and his sister for rents and profits of the said parcels of land; for a readjustment of the accounts of the several *cestui que trust*, in the different deeds of trust with the respective debtors, which are alleged to have been fraudulently adjusted by McIntire; for the cancellation of the various deeds, and for a recovery of possession of the lands from whoever may happen to be holding them and their restoration to the respective owners who were such when they were sold or to their descendants.

In the Pryor case it is alleged that McIntire, acting under a deed of trust from the owners, in June, 1881, sold the property therein described at public sale, after advertisement. There is no charge the amount realized was insufficient, but it is alleged that complainant's husband really became the purchaser at such sale; that Pryor and his wife remained in possession and continued to pay McIntire rent until September, 1884, upon his representation that he would apply the rent thus paid to the indebtedness due on the purchase, and that when all should

be paid he would convey the property to complainant; that "complainant has only recently discovered that the sale was made without the knowledge, authority, or direction of the holder of the note secured by the trust," for the fraudulent purpose of securing the property to McIntire himself; that a few days after the sale McIntire conveyed the land to Jenison, the codefendant, secretly and unknown to Jenison and without his consent, authority, or knowledge, and in April, 1882, procured the execution by Jenison of a conveyance of the property to one Emma Taylor, a fictitious person; that the subsequent conveyance in 1884 by Emma Taylor to Martha McIntire was fraudulent, as was also a quitclaim deed executed by Jenison in 1887 to Emma Taylor, and the consideration of $100 named therein is also false and was never paid to Jenison.

In an amendment filed a month later the complainant avers that "all of the foregoing facts have only been discovered by complainant within the past few months."

The sale took place in June, 1881; the bill was not filed until October, 1890, nine years and four months afterwards, a period within which any action at law to recover the balance alleged to be due by McIntire out of the proceeds of sale or for rents and profits would have been thrice barred.

Referring to the testimony only so far as it bears on the question of due diligence, it is proved that Pryor lived with the complainant, his wife, in the house, paying rent monthly to McIntire for three years after the sale, when the key was delivered by them to McIntire; that her husband survived until July, 1890; that in 1884 they removed to a house opposite and very near the property sold, and that she lives in that neighborhood still; that neither Pryor nor his wife ever made the deposit required by the

admitted terms of sale or paid either the cash or either of the deferred instalments or demanded or received a deed; that they stood by and saw the property improved by buildings by Martha McIntire without objection. The complainant also swears she met McIntire soon after the sale in Judiciary square (nine years ago) and intimated her dissatisfaction to McIntire with his proceedings at the sale. Jenison, the party secured and the codefendant who received a conveyance as purchaser after the sale, is a clerk in one of the departments and resided in Washington then and has lived there ever since, and the due execution of his deed to E. A. McIetire, recorded in July, 1881; of that to Emma Taylor, recorded in April, 1882, and of that to Martha McIntire, recorded in October, 1887, of the property so knocked down to him at the sale, is not disputed. A deed purporting to convey the property from Emma Taylor to Martha McIntire has been on record since October, 1886. It also appears that the indebtedness to Jenison, to secure which the trust to E. A. McIntire, in May, 1880, was made, had its origin as far back as May, 1876, in a deed of trust from the Pryors to B. H. Warner and Henry McIntire, duly recorded.

It is not denied that in May, 1881 (before the sale), Pryor and wife had undertaken to convey the property to Martha McIntire in consideration of $5 and the assumption by her of the liens on the property by deed duly executed and acknowledged, which Martha McIntire refused to accept.

If the Pryors really believed the property was struck off to Thomas Pryor at the public sale in 1881, it was surely incumbent upon them to present to the proper court during all the intervening years their complaint as to the fraudulent conduct, of which they then had ample knowledge, if the complainant tells the truth in her bill, al-

most from the day of the sale; but they remained silent in the face of this knowledge and in the light of all the circumstances before referred to.

That proper diligence was exhibited in the commencement of the Pryor suit cannot be successfully contended.

In this as well as in the Hayne case mention is made in the bill of the fact that the complainants are colored people and of their asserted ignorance. It appears, however, they could all read and write. Hayne, who is a clergyman, seems to be a fairly educated man. The courts will be sedulous to protect persons in the condition described against imposition, but their color and alleged helplessness cannot be successfully invoked as a justification for making questionable or exceptional rulings against those who suffer to deal with them.

We have seen how explicitly the courts have declared that laggard complainants must set forth specifically what were the impediments to an earlier prosecution of their claims; how they came to be so long ignorant of their rights; the means used by the guilty party fraudulently to keep them in ignorance; with distinct averments of the time when the fraud was discovered; "that the court may clearly see whether by the exercise of ordinary diligence the discovery might not have been made before;" and, further, that it is all-important to consider "what information they might have obtained if they had used the means and opportunities directly at their command;" that the party should have used reasonable diligence to inform themselves of the facts, and he is chargeable with such knowledge as he might have obtained upon inquiry.

Evidently there was no sufficient compliance with these requirements in framing the bill. The complainant simply declares "she only recently discovered" certain alleged facts, among these that the sale was made by McIntire

without the knowledge, &c., of Jenison, and that Jenison never received the $100, the consideration for one of the deeds (both of which assertions are admitted by Jenison to be incorrect), but there is no attempt at an explanation why this knowledge could not have been obtained at a much earlier day. Nor does any such explanation appear in the proof. That which was obtainable from others in 1890 would seem to have been equally obtainable from the same or similar sources in 1889, or during many years previously, for it is proved in the case that as far back as 1887 a bill had been filed in this court, No. 10745, equity, making similar accusations that Emma Taylor was a myth instead of a real person, which remained on the docket of this court accessible to all until 1893, when it was dismissed by the complainant therein.

A similar delay appears to have attended the filing of the bill of Elizabeth Brown. It avers the execution by her mother, Barbara (who, it is charged, died in 1883), of a deed in trust to Edwin A. McIntire to secure an indebtedness on a note to one Brouner; that in April, 1881, there was an alleged sale by the trustee at public auction at which the property was knocked down to Emma Taylor, to whom the trustee executed a deed in April, 1881 (recorded in the same month); that Emma Taylor was not a real person, and her name was used by McIntire to assist him in his fraudulent purpose to obtain the property for himself; that no deed had ever been delivered to her, and she made no claim to the lot; that Barbara Brown died shortly after the sale, wholly ignorant of the fraud perpetrated upon her, and complainant has only within the past weeks discovered the facts hereinbefore set forth as to the fraudulent sale and the deed executed in pursuance thereof.

The bill was filed on the 7th of February, 1891, nine

years and ten months after the sale and conveyance to Emma Taylor.

After the answer to McIntire had been filed to the original bill an amendment was filed making Martha McIntire a party and attacking the validity of a deed purporting to be from Barbara Brown and Emma Taylor to Martha McIntire, dated April 28, 1881, recorded April 7th, 1891, and of another deed purporting to be from Emma Taylor to Martha McIntire, dated September 6th, 1884, recorded 7th of April, 1891, which had been filed with McIntire's answer. This amended bill denounced these deeds as fraudulent, and the complainant claimed to be reinstated in the property, and for an account, &c. It also submitted interrogatories to be answered by the defendants and averred the complainants did not know of the existence of the first-named deed until the filing of McIntire's answer, and that therefore the complainant did not make the said Martha McIntire a party before.

In May a further amendment was filed averring no public sale was ever made, but the entire proceeding was fraudulent; that "Barbara Brown died in 1885, wholly ignorant of the fraud perpetrated upon her, and that complainant has only within the past week discovered the facts as to the pretended sale and the deed executed in pursuance thereof." In this amended bill there is no waiver of oath in the answer.

The defendants answered under oath and denied all incriminating charges in the bill and amended bills, and respond to the interrogatories in the amended bill propounded.

There is wanting in this bill an explanation why Barbara Brown should have neglected to institute proceedings to set aside the sale during her lifetime, if she disapproved of what was done, or why the complainant delayed so long

the assertion of her claim; nor does the daughter say when or how she discovered that Emma Taylor was a myth, or why she could not have made the discovery sooner. Her mother lived near the land till her death, and her brother, Leonard Sinnemacher, was living in April, 1881, four doors from the house, which stands on a subdivision made by the brother and recorded in his name. Nothing could have been easier than for her to have consulted with this brother as to the alleged imposition upon her rights and procure his aid in obtaining a satisfaction from McIntire for any wrongs she had received at his hands. The records disclosed the execution of the deed from Barbara Brown to E. A. McIntire from June, 1880, and of that from McIntire to Emma Taylor, conveying the land, from April, 1881. That Barbara Brown received the $400 borrowed by her on the note to Brouner described in the deed of trust is not denied, and there is nothing to show she ever paid any part of it, except by the sale of the land for that sum. That she was needing money about the time the deed in trust was given appears also from the deed of Peugh, trustee, and Barbara Brown to McIntire, recorded in October, 1880, conveying another lot to secure a note of $600 to Galliher; which facts are quite inconsistent with the brother's testimony that his sister at the time of the sale had a keg of gold in her house.

With these surrounding circumstances, notifying parties interested and summoning them to diligence in making their complaint known, there can be no doubt that supineness, instead of reasonable promptness, characterized the bringing of this suit, and that the bill contains no satisfactory explanation of that delay.

In the Ackerman case it is charged that complainant, wishing to raise some money in March, 1882, placed in

McIntire's hands for sale a small lot, which shortly afterwards he reported he had sold for $300 to Emma Taylor, to whom Mrs. Ackerman executed a deed dated 24th of April, 1882, and duly recorded; that the price was not a fair one; that McIntire paid her only $75 from the proceeds; that on information and belief she avers Emma Taylor was not a real person or the real purchaser, but that the name was used fraudulently by McIntire to enable him to obtain the property for himself, and she submits that McIntire should not be allowed to retain the property, and prays the deed to Taylor may be cancelled and that an account of rents and profits may be decreed, and for a decree directing payment of whatever may be found due. E. A. McIntire and Emma McIntire, the two original defendants, answer under oath (the oath not having been waived in the bill), denying the charges of fraud, and McIntire insisting he had settled honestly with the plaintiff.

This bill and that in the Brown case were filed the same day, and resemble each other closely in their formal parts and in many of the charges. After McIntire had answered, an amendment was made making Martha McIntire a party defendant and containing similar interrogatories, which the defendants were called on to answer, without oath, principally as to the existence of Emma Taylor, to which the McIntires answered.

This bill was filed 7th of February, 1891, eight years and eleven months after the sale and conveyance sought to be cancelled. Her deed had then been on record since April, 1882. The complainant testified she had a dispute with complainant, complaining of the smallness of the price at the time of the sale; that he then explained the matter, but that she had on the same grounds complained to McIntire ever since whenever she would meet him.

She admits she had testified in another case, about the time of the sale, that she had received $175 on the purchase; that there were taxes to a considerable amount standing against the property at the time, which were deducted from the $300; that she has lived in Washington, employed as a clerk, ever since; that she was anxious to sell the property at the time it was sold, as she then needed money, and there was some trouble about the title.

The only explanation in the bill of the delay in bringing suit is contained in the 6th paragraph in these words, "On information and belief, only recently obtained, complainant avers and charges that the name of Emma Taylor was adopted for fraudulent purposes," &c.

There can be no controversy that this bill contains no adequate disclosure of the time and manner in which she acquired the alleged information, and that it fails to furnish any explanation why it could not have been obtained sooner. The amended bills in this and the Brown case, averring the complainants in each case had learned of the two unrecorded deeds only upon the filing of McIntire's answer to the originals of these bills, do not remove this objection, as the bills were not filed to set aside those deeds, and they are only referred to in McIntire's answer as evidence to meet the main charges in the original bill.

If the exacting requirements of a successful reply to the objection of laches as expounded in the cases I have quoted are ever to apply, it would be in such a case as this.

In the Southey bill the plaintiffs claim as heirs-at-law of Cornelius Cohan; and aver that E. A. McIntire, claiming to act under a trust deed from Streb and wife (recorded in 1872), conveyed to one Swartzell, in 1876, the lot

described, in pursuance of a pretended sale made for an alleged default in payment of notes secured by the deed; "that complainants have only recently discovered that the said pretended sale was a deliberate fraud perpetrated by said McIntire on complainants' father, of which he was wholly ignorant during his lifetime, the facts and circumstances of said fraud, which have only within the past ten days been discovered, being set forth in the succeeding paragraphs of the bill." The bill then avers on information and belief that at the time of the sale the whole indebtedness secured by the deed had been paid, or, if not entirely paid off, that McIntire held the unpaid notes, and was therefore disqualified as trustee to sell for their default; that Swartzell was a fictitious purchaser, used by McIntire to cloak his own fraud and allow him to purchase at his own sale, and that McIntire took possession at once of the property and has held it ever since; that in May, 1882, Swartzell, in ignorance of the fraud, conveyed the property to one Emma Taylor (a fictitious person), without consideration; that in May, 1884, McIntire fraudulently caused a deed to be executed purported to be signed by Taylor, conveying the property to Martha McIntire, and that said deed was without consideration, and that all said deeds, if not void for other reasons, are void because there is no such person as Emma Taylor. This bill also required answers from the defendants, the McIntires, without waiver of oath.

The defendants answered on oath denying all the charges of fraud made in the bill.

The alleged fraudulent conveyance to Swartzell was executed in December, 1876. This bill was filed in March, 1891, fourteen years and three months afterwards. That it contains no sufficient statement of the time and manner of the discovery of the alleged fraud and no ex-

planation or excuse why the discovery was not made sooner is apparent; and in view of the numerous conveyances offered by both parties and of all the other facts imputing notice to those entitled to complain of any fraud in the sales, it seems impossible to believe the parties at that time thought they had any just grounds for complaint. The testimony of John Southey, the owner of the property at the time of the sale, who is the husband of one of the complainants and brother-in-law of the others, that immediately after the sale he complained to McIntire that he had no right to sell, and that he had frequently done so since that time, and would have filed a bill then for an injunction if he had been in funds, is conclusive of the question.

The last bill of the series is that brought by Laura Haynes and her husband against Edwin A. McIntire alone.

It charges that being residents of South Carolina, on the 7th of September, 1881, they conveyed to defendant E. A. McIntire lot 31, in square 388, in this city, to secure the payment of a promissory note for $650 made to one Galliher, defendant being then their agent to collect the rents of the property; that in August, 1882, the defendant pretended to sell and convey the property to Emma Taylor for $500; that in May, 1883, a deed was recorded from Taylor to Alfred Brown, conveying the property for $1,100 in cash and deferred notes, all of which had been paid to defendant and appropriated by him to his own use. In paragraph 7 the bill says "that complainants have only recently discovered that the said pretended sale and deed to Taylor was a fraud perpetrated by McIntire upon complainants, who, being absent from Washington city, had no means of heretofore discovering said frauds;" "that there has never been such a person as Emma

Taylor, and she was an invention of defendant to assist him in his fraud," the bill concluding with a prayer that defendant may answer the interrogatories therein, and that defendant may be required to account, &c.

An amendment to the bill filed in July, 1891, avers there was no public sale; but nothing is said as to when this information came to complainants' notice.

The defendant answers the interrogatories on oath, denying all charges of fraud or impropriety in the matter.

The sale took place and the deed bears date in August, 1882, and the bill was not filed until May 12, 1891, eight years and nine months afterwards. The correspondence given in evidence between the parties before and after the sale, with the records of the deeds, certainly indicate that the exercise of proper diligence on the part of the complainants would have enabled them to institute this suit with greater justice to themselves, as well as to the defendant, at least eight years ago, and their failure to make any move in this direction during all this time under the circumstances, without any plausible excuse for their delay, must be considered such culpable laches as disentitles them to be heard in a court of equity.

There have been cases where, upon proper averment of the recent discovery of hitherto unknown facts, with satisfactory explanation of the reason why such discovery had been so long delayed, courts of equity have listened to appeals for relief after longer delays than are here shown; but those were cases where the evidence rested upon incontestible records or where from other considerations the dangers which are almost inseparable from long delays did not menace the just rights of defendants. To lend too willing an ear to attempt to break up settlements long since considered final upon vague charges of fraud to be supported only upon the precarious testimony of

ignorant witnesses whose memory must naturally become weakened by the lapse of time would be to encourage a general attack upon the possessions of the community. At the least, the claimants who seek this extraordinary intervention should observe in the presentation of their case the rules so imperatively asserted by repeated decisions of the highest courts, which have also declared that they will hold such claimants to the stringent rules of pleading and evidence.

One prominent ground upon which the courts base their refusal to listen to such tardy complaints is the danger that the lapse of time may have made "some change in the condition or relation of the property or the parties."

(145 U. S., 373, Galliher *vs.* Cadwell.)

That such changes have occurred in the condition of the different properties involved in these causes is apparent.

Between 1876 and the present time there has been a marked increase in the values of landed property in Washington; and increase in the values is a circumstance greatly relied on by the courts when they are approached by claimants shown to have acquiesced in the occupation of property by others who during the intervening time have been regularly paying the taxes and other charges on the property without remonstrance by those now claiming title, and presenting their claims only after such great increase in value has appeared, and after the occcupants have expended money in improvements still further increasing its value.

(148 U. S., 370, Johnson *vs.* Standard Mining Co.)

These conditions appear with respect to each of the properties, to a greater or less degree.

The present owner of the Hayne property is Alfred Brown, who purchased in good faith, paid the purchase-money, and has been in possession ever since under a deed from Emma Taylor. This his muniment of title is now denounced, after having been on record for more than eleven years, as conveying to the grantee no title whatever. A prompt complaint by the owners of the alleged misconduct of McIntire would at least have intercepted the payment of the numerous deferred payments by Brown (who is also a man of color) if it would not have resulted in clearly showing either that those charges were incorrect or in establishing them while the witnesses were alive and the facts fresh in their memory. In the same predicament Joseph Forrest may be compelled to stand as another of the grantees of Emma Taylor, for his title must depend upon hers; and such may be the painful situation of all other holders of property who claim through her.

10 Wheaton, 152, Elendorf *vs.* Taylor.

2 Sch. & Lef., 636, Hovenden *vs.* Lord Annesly.

In speaking of changes in the condition of the parties the Supreme Court specially refers to the chances of the death of witnesses during such protracted delays in these words: "As the lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and the other means of judicial proof."

(99 U. S., Golden *vs.* Kimmell.)

Death has been quite as busy as usual with the actors and witnesses in these transactions. Of the principals, Thomas Pryor and Barbara Brown and one of the McIntires have died. Of witnesses, William Helmick, the justice; Caldwell, the auctioneer; John E. Kendall, Fred.

W. Jones, and Cathcart Taylor have died. Every one of these witnesses, it is insisted by the defendants, would have given important testimony in their favor. How they might have testified I cannot determine, but certainly most of them had the qualifications to give valuable evidence as to many of the matters in controversy—Helmick more particularly as to the signatures and the execution of the deeds; the auctioneer as to the writings claimed to have been made by him and to the sales. With respect to the latter, Kendall would also have been a witness, and perhaps all of them with respect to the existence or identity of Emma Taylor. The effect of the lapse of time on the "memory of witnesses" is well illustrated in the contradictory testimony of Peugh, who, it is stated, has died since he testified last in the case. The liability to the disappearance of papers with the efflux of time is another important consideration, and an instance of this is shown in the destruction by Caldwell's widow of his important record of auction sales.

Another difficulty that is frequently developed or increased by lapse of time is the impossibility of giving complete or proper relief where the courts are inclined to interfere, or, as it is usually expressed, to do full justice to the parties that the court may rectify the wrong (as the Supreme Court expresses it) "with a feeling of certainty that they are not committing another and perhaps greater mistake."

(7 Gill, 363, Clabaugh *vs.* Byers.)

The hardship of ejecting such a purchaser as Alfred Brown has been adverted to; but perhaps a greater trouble would arise if the readjustment prayed for of the claims of the *cestuis que trusts.*, who have received their money and gone their way, should be attempted, and an

accounting directed concerning the rents received or recoverable in the interim, and an accommodation of the counter-charges for taxes, betterments, or improvements that would be claimed if any such proceedings were to be attempted after such a lapse of time and the disappearance of witnesses, past and prospective.

As the courts have declared that in suits of this description they will not relax the rules of pleading and evidence, it is proper to notice that even if the complainants were otherwise free from objections and their averments were established against the other parties no decree could be granted aginst Emma Taylor, as no decree *pro confesso* after publication was obtained against her.

I think it proper to add that I am not to be understood as expressing any opinion as to the charges or defenses presented by the opposing parties upon the facts, as the right to pass upon these rival contentions is denied me, under the circumstances, under the controlling decisions of the highest courts.

For these reasons I shall sign a decree in each case dismissing the bill.

A. B. HAGNER.

Opinion of Justice Hagner upon Re-argument of these Cases.

During the course of the argument of these causes the defendants' counsel asked leave to file an amended answer or pleas presenting specially the question of laches. The court declined to allow this course to be taken, upon the ground, expressly so declared at the time, that no such pleading was necessary, as the court, *mero motu*, could notice that defense.

At the close of the whole argument the court, for the special purpose of calling their attention to the question of laches, asked the counsel what they had to say upon that subject. The defendant's counsel reminded the court of his application and of the grounds upon which it had been overruled, while the complainants' counsel insisted the defense was not applicable because of the recent discovery of some of the deeds offered in evidence. The justice then informed counsel he desired to receive any further arguments they might wish to submit on briefs. Each side accordingly filed supplemental arguments, consisting chiefly of comments on the testimony, but those of the defendants referred at some length to the question of laches, while the complainants' counsel confined themselves almost entirely to a discussion of the testimony.

As my examination of the cases progressed I became convinced the question of laches should be the controlling ground for my decision, and the opinion was framed accordingly.

For reasons I believed should be absolutely controlling with me, I purposely refrained from the expression in the opinion of my convictions as to the facts, except so far as they bore upon the question of laches, believing it was my duty to decide it as I did, upon that question alone.

After the delivery of the judgment the complainants' counsel expressed their desire for a rehearing upon the question of laches, and at my suggestion filed an application, which was promptly granted. As the order was altogether within the discretion of the court, it was confined to the question of laches; and being convinced an argument on notes would be more satisfactory and instructive, it was accordingly ordered.

If it had been intimated at the time that an oral argument was considered preferable, there would probably

have been no difficulty in complying with the intimation, as had been the case with respect to every request or suggestion on the part of complainants' counsel in the whole conduct of the cases. The intimation that, as a general rule, a re-argument is made *ore tenus* is incorrect. It is a matter to be regulated by the court in its discretion, and in my experience re-arguments have usually been presented on notes.

The time limited for the filing of the new argument accorded with that suggested by complainants' counsel, and it was afterwards extended on their request. The extent and thoroughness of the new volume submitted to the court is not evincive of a lack of time for examination or preparation.

No lawyer can deny the existence of the irrefragable rules of equity that there must be conscience, good faith, and reasonable diligence to call into action the powers of the court, and that where these are wanting the court does nothing; that it has been a recognized doctrine of courts of equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in the assertion of their claims; that where unreasonable delay appears the party suing must specifically set forth the impediments to an earlier prosecution, and that the excuses presented must be satisfactory to the court.

Wherever the court becomes convinced from examination of the pleadings and evidence of the existence of what may properly be called laches, unexplained to its satisfaction, these rules should apply as absolutely as the statute of limitations applies at law, and equally, without respect to any alleged hardship of the case. If in an action at law on a promissory note the defendant pleads the bar of that statute and the defense is not impaired by

the setting up of a new promise, the court does not pause to listen to testimony to show that the defendant had behaved ungratefully about the transaction or that he bore a bad character. So, if in a suit upon a verbal promise to pay the debt of another the defendant relies upon the provision of the statute of frauds invalidating such a promise, it would be useless for the plaintiff to attempt to show the defendant had pledged his honor to pay the debt or that the plaintiff had been greatly injured by his bad faith. The court would promptly sustain the defense in each case, because the principles of the law imperatively require the defense should be sustained.

Why should not the same principle hold in the application of the equity rule respecting laches?

The court examines the facts to ascertain, 1st, whether there had been culpable delay in bringing the suit, and, 2d, whether a satisfactory explanation and excuse for such delay appears in the case before it, since each case must stand upon its own circumstances; and where it has arrived at the conviction that such unexplained laches does appear, then, in the language of the Supreme Court in Hammond *v.* Hopkins, the defense of laches "imposes an insuperable bar to contention upon the subject." There is no longer room for disputation as to the weight of this or that fact or the comparative value of the testimony of different witnesses, and the reiterated denunciation of the opposing witnesses and the most positive assertions of the personal beliefs of counsel as to the excellence of their own witnesses and the bad character of those who differ from them must be equally ineffectual to raise suce a contention.

Whether the witnesses called by the parties to testify as to the case at large are good or bad cannot affect the decision as to the unexplained laches after the court has decided they are present in the case.

After such a decision, to enter upon a particular examination of the truth of the averments of fraud set forth by one party and denied by the other would be but waste of time.

It seems to be evincive of a distrust by the court of the existence and strength of the rule and almost an apology for its existence. As though he were to be moved by objurgations against the witnesses of the defendants and the appeals to a court of conscience to avenge the frauds whose existence has been alleged, the judge is besought to travel through the record for no purpose unless it be to apologize for enforcing an unquestionable rule of the equity law. If the court has decided that a case of unexplained laches is presented, its plain duty is to dismiss the bill and to hesitate to perform that duty would be inexcusable neglect of its own ancient and well-founded principles. In accordance with this idea is the practice, frequently pursued of late years, to prevent the delay and expense of testimony that would be of no avail by deciding the question of laches upon demurrer to the bill, as was done in Lansdale *v.* Smith, 106 U. S., 394, and has been followed in numerous cases, though doubtless against the earnest arguments of counsel for the complainants in those cases.

To pursue a contrary course would be worse than useless in its influence. It would unquestionably be in opposition to that other principle, that it is the interest of the Republic that litigation of this character should be discouraged rather than stimulated; and if this wholesale doctrine is to be recognized anywhere it should pre-eminently be applied in this jurisdiction, where irregularities in real-estate proceedings were frequent in remote times and where the disposition to bring speculative suits is unfortunately too common.

If those contemplating the institution of suits involving the opening and re-examination of ancient settlements should come to appreciate that the first effort of the courts will be to ascertain, from a careful examination of the case, whether an unreasonable and unexplained delay is manifest, and that when a positive determination to that effect has been arrived at it "imposes an insuperable bar to further contention in the case," there would be more hesitation in hazarding such enormous costs as the plaintiffs' brief on the re-argument informs us have already been incurred on the part of these impoverished plaintiffs.

Whereas if it is to be understood, on the other hand, that, although the court shall have arrived at such a determination, the chance still exists that under the influence of an abler presentation of the plaintiffs' claims and of the vehement denunciation of the defendants' conduct the court, through pity and indignation, may be induced to withhold the application of those settled rules, then hopes are held out that will soon bear evil fruit.

After the Supreme Court had declared its conviction that inexcusable laches appeared in Hammond *v.* Hopkins, which disentitled the complainants to recover, would they have listened to an argument, however earnest, to prove the facts could be shown to be so atrocious that a chancery court ought not to tolerate the escape of the perpetrators with their ill-gotten spoils, and that chancellors who love justice should not allow iniquity to succeed, despite of the technical rules? That court answered such a question in the negative when it declared that the defense of laches "interposed an insuperable bar to contention on the subject."

The complainants' counsel in the re-argument contest the correctness of the court's decision as to the question

of laches and support their contention by criticisms upon the cases cited in the opinion, which they insist are not applicable or have been misconstrued by the court, and also by the citation of a number of cases not referred to in the opinion.

With respect to the first class of cases, the court has re-examined them in the light of those criticisms and sees no reason to change its views as to their applicability or authority.

One assertion made by the counsel with great positiveness, and repeated more than once in the re-argument, is that no cases can be found in which the courts of equity have ever sustained the defense of laches (where the controversy related to real estate) unless the delay after the discovery of the fraud has been more than twenty years. Again, the counsel confidently assert that the reports of the Supreme Court will be searched in vain for a contrary doctrine, and that "no case can be found in those reports in which the bill was dismissed on the ground of laches where actual fraud was charged against a trustee of real estate and if the bill was filed within twenty years after discovery of the fraud."

And in discussing the case of Hammond *v.* Hopkins they again assert that "the delay to complain was over twenty years when the statutory bar was completed."

The counsel have assembled unnecessary conditions in the presentation of their propositions; but, taking them all as requisite to an accurate definition, I think it would not be difficult to find many cases (not one alone) where the courts have dismissed such bills upon the ground of laches which were filed within less than twenty years. In Hammond *v.* Hopkins the sale by the trustee took place on the 10th of May, 1864, and the bill was filed April 8th, 1884, one month less than the twenty years,

and therefore inside of the legal term when a right of entry would be barred at law. That bill also prayed for a decree involving the setting aside of deeds made and recorded still subsequent to the time of the sale, settlements in the orphans' court in 1865, and sales running down to December, 1875, and decrees passed in 1877, and the bill alleged and the witnesses swore that many most important facts connected with the sale were not discovered by complainants until February, 1884.

In Harwood *v.* R.R. Co., 17 Wallace, 78, the bill was filed in December, 1865, to vacate a decree passed in 1860 for the foreclosure of a mortgage upon all the property of the railroad, alleging ignorance of the fraud charged until 1865 and explaining the reason why such ignorance existed. On demurrer, the court below dismissed the bill, and this action was affirmed by the Supreme Court upon the express ground that the delay of five years in instituting the suit was too great, and that no sufficient excuse was given for it in the bill. The counsel are in error in asserting the bill was not dismissed because of laches. The language of the report is directly to the contrary, as is noticed in 145 U. S. 372, Galliher *v.* Cadwell, although the delay was only for five years.

It is true the Supreme Court pointed out the serious defect in the proceedings in the neglect to introduce as a party the person who had made the sale sought to be vacated, just as this court in its opinion in the present case remarked upon the failure by the plaintiff to procure an order of publication and a decree *pro confesso* against Emma Taylor, a grantor and grantee, who was sued as a non-resident. The complainants in the re-argument seem to consider this an entirely unimportant omission, inasmuch as they are satisfied no such person exists; but whether Emma Taylor's appearance was obtainable was a

fact to be ascertained according to the rules of equity practiced, which require a publication, and it is not sufficient that the complainants now inform the court such a proceeding would have been fruitless. The other side has the same right to its opinion, and it denies this contention of the complainants. We have seen (in 7 Howard, 829, Stearns *v.* Page), the Supreme Court said, "they will hold the complainant to stringent rules of pleading and evidence and require him to make out a clear case," and the assertion of counsel that the omission is unimportant cannot change the rules of the court.

The court could not concede, except because of a stolid purpose to disbelieve every witness on the part of the defendants, that the non-existence of Emma Taylor is so conclusively established by the testimony that the complainants' assumption of there being no such person is justifiable. Eight witnesses testify to seeing her about McIntire's office, as large a number probably as either complainant adduced to support any assertion on that side; and such a concession would be singularly at variance with the admission of counsel, in the first brief, at page 7, in these words: "Again, while he puts upon the stand persons who saw her (Emma Taylor) prior to 1880, which, of course, was easy enough to do, since there seems no doubt that at that time a young woman by the name of Taylor, whether for the purpose of flirting or otherwise, made occasional calls upon him at his office (for they were so intimate together that the clerks used to joke about it and say he was going to marry her, &c.)," and with that was probably a more explicit admission to the same effect in his oral argument. It is not easy to understand how the court is to conclude under such circumstances that a person who was so distinctly in evidence in 1880 must now be assumed beyond all possible

doubt to be a mere myth, and never to have existed after 1880, or indeed at any other time, as is now contended. Our country is very extensive and the world is still larger, and there is no more reason shown why Emma Taylor's present whereabouts should be known to the persons concerned in this suit than their present whereabouts should be known to her.

The court of appeals in the recent case of Walter and Mackey, trustees, *v.* Slater enforced this principle by refusing to recognize the authority of trustees in their own names to institute suits (which were characterized by that court as apparently vexatious) in behalf of numbers of claimants, notwithstanding such form of prosecution would have been highly convenient and economical to the plaintiffs concerned.

Besides the cases cited by the court in its opinion, it may be proper to refer to some others in opposition to this contention in the re-argument. In Godden *v.* Kimmel, 99 U. S. 201, a deed had been executed in October, 1857, conveying real and personal estate to a trustee, which, in February, 1871, was attacked as fraudulent by the creditors of the grantors. The Supreme Court dismissed the bill because of the delay of less than fourteen years, unaccompanied by any satisfactory explanation of the laches.

And in Richards *v.* Mackall, 124 U. S., p. 186, the opinion says: "The present suit was brought by Brooke Mackall, Jr., on the 11th of April, 1882, nearly twelve years after Richards' purchase, for the purpose of having the sale of June 13, 1870, the conveyance of October 17, 1870, and all transfers depending thereon adjudged to be void and of no effect." The court in its opinion, on page 188, after stating the general principles applicable to the subject, says: "These principles, applied to the present

case, lead to a reversal upon the ground that the appellant, upon his own showing, has been guilty of gross laches in applying for relief." And in the concluding sentences it says: "In our judgment, he is not in a position to claim the interference of a court of equity. For that reason alone the judgment must be reversed and the cause remanded, with directions to dismiss the bill." The Supreme Court there declined to enter upon an examination of the facts, except so far as they bore upon the question of laches (precisely as this court did in the case at bar), not having been taught by the counsel that they had no right to adopt such a course.

It is very evident the counsel have not exhibited their usual accuracy in their assertion of the alleged principle I have been examining.

The complainants' counsel in the re-argument have referred to a large number of cases, thirty or forty in number, not cited in the opinion of the court, for the purpose of showing the court's view of the question of laches is not supported by the authorities, and have quoted quite extensively from the opinion in several of those cases. This number might have been increased almost indefinitely, for the decisions on this interesting point are almost unlimited. But interesting and instructive as are the extracts, it is well settled that each case must be decided upon its own facts and circumstances, and hence a court can no more with safety rely upon the conclusions of other tribunals in such cases than upon the positive contentions of the counsel on one side or the other of the pending case. Most of these cases are quite familiar to the court. A considerable number of them were referred to in Hammond *v.* Hopkins, and, so far as they are inconsistent with that case, may be regarded as overruled for the present inquiry. The Supreme Court

in the latter case commented particularly upon Michou *v.* Girot, 4 Howard, from which counsel have quoted liberally in their brief, and the opinion of Chief Justice Fuller sustaining the defense of laches disregards the utterances in the former case. The question before me is not a new one, and it is not now engaging my attention for the first time. As counsel and while sitting as judge in some of the cases cited, I have had repeated opportunities to weigh the force of most of the citations, and I conceive that nothing in the presentation of them by the counsel in their argument can affect the force of the rulings in the later decisions of the Supreme Court. If any of the cases cited are inconsistent with those later decisions they are to be regarded as overruled.

The counsel preface their presentation of this large number of cases by the statement that all they may say with reference to them in the re-argument is advanced upon the assumption that they have fully proved the frauds alleged, and that if the court, after the presentation of the facts disclosed by the evidence, is not convinced "that such is the case, then the discussion of the question of laches by them will be useless, since every argument they shall make will be based upon that assumption;" and they further "concede, if they have not proved the charges of fraud in all their enormity, the bills should be dismissed without ceremony." In view of these statements, more than once repeated, and of the request of the counsel for the defendants in his brief on this re-argument, I think it proper the court should so far depart from its original purpose not to express an opinion upon the facts in this case (except so far as they bear upon the question of laches) as to state that if my original purpose, before determining to confine the opinion to the question of laches alone, had been adhered

to, I had intended in expressing my views as to the sufficiency of the proof to insert in the opinion these words of the Chief Justice, from page 272 of 143 U. S., Hammond *v.* Hopkins: "I think the complainants failed to make out their charges of fraud, and that, apart from that, the evidence of laches imposed an insuperable bar to contention upon this subject."

In examining the charges of fraud, so frequently reiterated in these bills, the court was bound to apply to their consideration the cardinal rules of evidence applicable to the subject, and no argument can cause the court to lose sight of those rules where charges of fraud are under examination. The general term, in 2 Mackey, 563, Clark *v.* Krouse, adopts the principles of innumerable cases on the subject; that the law does not presume fraud; that it must be established by evidence; that the difficulty of establishing the fraudulent intention furnishes no justification for the judge to presume a fraudulent intent from his own vague suspicions of the nature and character of the transaction; that where the attempt is made to set aside deeds as fraudulent the principle prevails that they are *prima facie* evidence of the verity of their contents, and where they are supported by the positive answer of the defendants the testimony to set them aside ought to be so clear and explicit as to leave scarce a doubt on the subject.

2 Maryland, 375, Farringer *v.* Ramsay.

19 do., 176, Moore *v.* Blanheim.

In 6 Peters, 716, U. S. *v.* Arredondo, the Supreme Court approves the language of Justice Washington in Conrad *v.* Nicoll, 4 Peters, 295, and declares it will be governed by the rules laid down by the distinguished judge who delivered the opinion in that case as follows:

Says the court in 6 Peters: "He laid down three rules which were incontrovertible:

"1. That actual fraud is not to be presumed, but ought to be proved by the party who alleges it.

"2. If the motive and design of an act may be traced to an honest and legitimate source equally as to a corrupt one, the former ought to be preferred. This is but a corollary to the preceding principle.

"3. If the person against whom fraud is alleged should be proved to have been guilty of it in any number of instances, still, if the particular act sought to be avoided be not shown to be tainted with fraud, it cannot be affected by those other frauds unless in some way or other it be connected with or form a part of them."

A further reason for caution in granting such relief exists in the present cases because of the character of the charges against the defendant Edwin A. McIntire.

Besides the allegations of breach of trust, embezzlement of the trust funds, and general unfaithfulness in the performance of his duties, he is especially charged with falsehood, perjury, and subornation of perjury, forgery, and the procurement of forgery, including one of the gravest offences known to the law—the forgery of deeds.

Even in a civil suit, where the fact to be proved involves moral delinquency, the evidence should be so strong as to exclude the presumption of innocence, for innocence is to be presumed until guilt is proved. 8 Maryland, 547, Corner *v.* Pendleton. In 2 Barn. & Ald., 386, Rex *v.* Twyning, where the legitimacy of a child depended upon the question whether the mother's first husband was dead at the time of her second marriage, the court said: "This is a case of conflicting presumptions, and the question is which is to prevail. The law presumes the continuance of life for seven years, but it also

presumes against the commission of crime, and that, even in civil cases, until the contrary is proved. If the female had been indicted for bigamy the evidence would clearly not be sufficient."

If vehement denunciation could supply the place of proof, the contention of the complainants might prevail; but the courts are charged with the duty of remaining uninfluenced by any consideration except the legal proof before them. In Hammond *v.* Hopkins, 143 U. S., 230, the court listened to an arraignment of the trustee whose conduct was denounced from the lips of our ablest counsel in words of wonderful power. The picture thus presented to the court was of a dying man commiting into the hands of his brother, his partner for years, the custody of his whole estate and the guardianship of his infant children, and of the brother completely disregarding these sacred duties; and, finally, under wholly unnecessary circumstances, as trustee, offering for sale a large landed property in this city, which has since become of enormous value, at the most unpropitious period—while the civil war was flagrant—and at a time when it was said the roar of the hostile cannon might have been heard in this city above the voice of the auctioneer, returning as bidder for a small price a man of straw, who bought in the lots for the trustee, by whom they were conveyed to the purchaser ten days afterwards, and then reconveyed on the same day to the trustee himself; that the entire proceedings of the trustee constituted a fraudulently concocted scheme to cheat the children of his deceased brother; that in his capacity of executor and guardian he had passed fraudulent accounts, from time to time, during the minority of his wards; that he had by fraud procured the execution to himself by one of the sons after he had attained age (who was mentally enfeebled by drink) of a convey-

ance of his interest in his father's estate, to which, under the command and direction of the trustee, he had signed his wife's name, and that the trustee by means of fraud had obtained the certificate of acknowledgement of that deed by two justices of the peace. The bill, filed one month inside the twenty years after the sale, declared the plaintiffs had discovered many of the most important of these facts only within a few weeks preceding, and the circumstances under which they were discovered were set forth at length in the bill, which also averred the poverty of all their father's children, while their uncle "had dropped off gorged from a scheme which had left them flaccid and drain'd."

To all these fervid appeals the Supreme Court doubtless listened attentively, and then declared, after recapitulating the facts as they found them actually established by the proof, that "the complainants had failed to make out their charge of fraud" (p. 272), notwithstanding the assurance of the plaintiffs' counsel that no man could doubt it was the most atrocious case that ever disgraced the records of a court of conscience, and notwithstanding the court in general term had expressed the opinion that the purchase made by the trustee at his own sale was fraudulent and should be vacated in favor of the minor wards.

Without intending to depart from the grounds of my former decision, I think it proper to say I cannot understand how counsel could expect a decree in conformity with the prayer of either of these several bills if they stood upon their own respective allegations and proofs alone, as in the Pryor case, for example, if the only matters presented for the consideration of the court were the pleadings and facts naturally connected with the sale and conveyance to Jenison in that particular case, and the

same may be said of each of the other cases; but the counsel have, in the first place, insisted the court is justified in the examination of each of the five cases, and, before it shall have decided upon either case, to consider the existence of and the charges in the four other suits involving similar accusations, and that this aggregation of suits is to be regarded as a circumstance tending powerfully to establish the contentions in each case in turn. I do not believe the law is so unreasonable and unjust as to tolerate such a contention. It is true that in certain cases (where the question of *scienter* is of importance, as in indictments for passing counterfeit money), it is justifiable, in proof of the *scienter*, to show that the offender has been guilty of passing counterfeit money in other cases, but not merely that he had been accused or charged with passing such money.

This exception is probably allowed as a mode of proving the *scienter*, since an honest clergyman, having in his pockets the collections of the church for the previous Sunday, might innocently pass a counterfeit coin; and the principle has been extended to accusations of fraud in civil controversies where guilty knowledge or the motive of the act under examination is sought to be ascertained.

And for this purpose fraudulent acts committed by the accused similar in appearance to that under examination may be shown in evidence to show such guilty knowledge.

But the principle of those cases cannot be extended so as to allow testimony to be given of other contemporaneous charges not yet established. Could it be possible that in the Howgate case, recently on trial in the criminal court, the district attorney, by way of proving the prisoner's guilt in the case on trial, could have been permitted to call attention to the fact that there were half a dozen indictments of similar charges pending against

the prisoner? Even where there have been convictions in other cases the law is plain that neither of these convictions can be noticed at all, except under strict and particular limitations. In 6 Peters, 716, U. S. *vs.* Arrendondo (*supra*), the Supreme Court, as we have seen, adopts the opinion of Justice Washington in 4 Peters, 295. The judge was there speaking of a case where the person against whom fraud is alleged has been proved to have been guilty of it in any number of instances, not simply charged with such other frauds ; and he declares it is still required that the particular act sought to be avoided should be shown to be tainted with fraud before it can be affected by such other frauds already "proved," and then only, if in some way it be connected with or form a part of them. To the same effect is 23rd Howard, 172. The contention of the counsel would justify the court, in the trial of case number one of these five suits, to find that case was sufficiently proved by taking into account the fact that accusations in the same direction had been made (though not yet passed upon by the court) in the four other cases. In the same way case number two would be proved by referring to the accusations made in case number one and in the remaining cases ; and so in turn each might be held to be established by these mere accusations, thus arguing in a vicious circle, which would admit accusations in other cases to stand as the equivalent of proof in the particular case. Such is not the law.

But the chief reliance of complainants' counsel to establish their contentions in these cases is built upon the alleged bad character of the McIntires and in their assumed perjuries and forgeries ; and, invoking the doctrine of the Santissima Trinidad, they insist the court should decide against the truth of whatever either of those witnesses may have stated in the course of the

examination, for unless those witnesses are discredited plainly the complainants could not sustain either case. That a large part of this incriminating testimony is obnoxious to the exceptions taken for irrelevancy, and because of its being mere hearsay and inadmissible upon other grounds, I am well satisfied; but I shall not undertake the enormous labor of examining the exceptions here, nor shall I pass upon the counter-charge of defendants as to the motive of these suits and their promoters.

So far as the effort to impeach the testimony of those witnesses depends upon the alleged proof of crime, it is hardly necessary to say such evidence is never receivable. Lord Holt said a great many years ago, in 4 St. Trials, "Look, ye! you may bring witnesses to give an account of the general tenor of this witness' conversation, but you do not think, sure, that we will try at this time whether he be guilty of robbery."

With respect to the attempt to impeach their testimony, it is observable that no witness is brought from the large population of this District to testify that either is unworthy of belief and that they would not credit them on their oath, although this is the most usual and perhaps the fairest way of impeaching a witness. Of course, there exists the practice to impeach the witness by contradicting his statements and showing that what he testified was at variance with what other witnesses had said on the same subject; but it remains that what those other witnesses said is also at variance with what the McIntires have testified; and there must be something shown as to the character for veracity ascribed to the opposing witnesses and to the nature of the contradictions themselves to compel the court always to believe the one party and disbelieve the other, for witnesses testifying to transactions as remote as these may very naturally make

misstatements without deserving unmeasured denunciation as perjurers. The tables might have been turned against witnesses on the other side. Mary Pryor signed and swore to the original bill in this case, in which, among other things, after stating she had conferred with Jenison, her codefendant, she swears he informed her he did not know the property had been sold under the trust or conveyed to him or that it stood in his name, and that he had received no consideration whatever for the execution of the deed to Emma Taylor. It cannot be contended this statement, sworn to and signed by Mary Pryor, was true. It is proved in the case beyond all question and admitted by Jenison that he had given written directions to McIntire to sell the land; that he knew of the execution of the deed to himself, and that he and his wife had executed a deed of trust of the same property about the same time. A similar flood of invective directed against the complainant Pryor would represent her as having come into the temple of justice with a lie in her mouth, and that these false charges were attempted to be supported, with all their many inconsistencies and improbabilities, by testimony equally unreliable.

The case set forth in the Pryor bill seems so wholly improbable that it is difficult to suppose its prosecution would have been persevered in, except for the supposed aid of the other cases and the furious and unceasing denunciation of the McIntires upon every point. For years before Edwin McIntire became connected with the property and while under the management of Brainard H. Warner it had been conveyed to Henry McIntire as trustee. This colored woman and her husband had fallen into arrears and had been unable to keep up the interest on the debt of $500 then due on the lot. Their affairs had become so hopeless that they had signed a deed con-

veying the whole property to Henry McIntire's sister for a nominal consideration, but the grantee, unwilling to shoulder the debt with the taxes and charges that had been incurred, refused to claim under the deed. Upon the direct written order of Jenison to Edwin A. McIntire a sale took place. Mary Pryor says that in accordance with a previous agreement with McIntire the lot was struck off to her husband for $700, for her use, by the auctioneer.

There is no pretense that either of the Pryors had received any money in the meantime to enable them to pay any part of this large sum, although they had been unable to keep down the interest on the smaller debt, or that either of them ever signed a note or any scrap of paper evidencing the alleged sale, or that either ever paid a cent on the alleged purchase, or that they had at the time money enough to defray the costs of the advertisement or to pay commissions of the trustees. McIntire was under no necessity to make so stupid an arrangement. No possible reason is assigned why Edwin McIntire, after having received the positive instructions of Jenison to sell, should have been willing to run the risk of so absurd and abortive a sale as the complainant pretends took place, for since the District was formed no sale was ever made marked with such absurdity or with such a total absence of anything to establish its probability. Pryor and his wife remained in possession of the lot for some years, paying rent to McIntire at the rate of $6 a month, which she said was to go on the principal, under the agreement, in case they should be able to pay off the purchase-money. In the meantime interest on the $700, with the taxes and repairs, should almost have equalled the rent, and (according to her story) not less than twenty years would have elapsed before they could have paid the

debt under this alleged arrangement even if they had been prompt and had acquired the ability to pay. To believe that so unnecessary and preposterous a bargain was actually made involves too serious a stretch of human credulity. Finally, at the end of a few years, without an expression of dissatisfaction or remonstrance by husband or wife, they surrendered the key to McIntire, left the premises, and moved to a house near at hand, where she still lives, and in silence saw houses built upon the lot, and during all this interval no word of complaint was heard from them, unless we are to believe her testimony that soon after the sale, at a time when she had nothing on earth to complain of (according to her own statement), she met Mr. McIntire in Judiciary square and expressed some unexplained dissatisfaction with his proceedings. Her dissatisfaction could not have been with the result of the sale, for her present contention is that she then thought the lot had been struck off to her husband; nor with the amount of the purchase-money, for the contention is that it was worth more than $800; or with the terms of payment, for they were lenient beyond all precedent; but even if her story in this particular be true, it shows she had knowledge of something wrong ten years before she brought this suit. Her charge as to the purchase by Pryor is attempted to be supported by the testimony of witnesses who profess to remember hearing the announcement of Pryor as purchaser, one at least of them from a position where they could scarcely have heard the bidding.

Among the witnesses who remember that so many years ago they heard the proclamation of a purchaser who had not a cent in the world to pay for what he bought are some negro girls, who were children of 7 or 9 years of age at the time of the sale. The common experience of

individuals is to be applied in judging of the value of such statements, and to me it seems most improbable, supposing any negro girls of such ages had been present at a sale of lands within the last month, that one in a dozen of them could be found to-day to tell what the sale was about or to give a reliable account of anything that did occur. That grown persons, after such a lapse of time, would remember the details or particulars of a transaction in which they had no particular interest is most improbable. If it were certified to me that since the first argument of this case a valuable property had been set up at public sale and knocked off to a purchaser, and that a person living three doors off, accustomed from time to time, though not regularly, to read as most persons do the advertisements of sales in the newspapers, had known nothing whatever of the sale until months after it had taken place I should be prepared to give it credence, since it would correspond with personal experience. How vehemently one possessed of only a part of the remarkable redundancy of invective of the counsel for the complainants could denounce the utter unreliability of Mary Pryor and her whole case can readily be imagined, and how naturally on the conclusion of such a tirade (adopting the idea of counsel) she might have been stigmatized as "*menteuse à triple étage.*"

If Jenison, an intelligent clerk in a public office, could vary his statements as he has done, doubtless because of this lapse of time, this old negro woman might well have erred, partly from the same cause. She probably did only what is so frequently done in this city by uneducated people. If either they or their ancestors ever happened to own any land here which had been sold long ago they are very easily convinced the transfer had been obtained by fraud, and that they ought to recover the lands

enhanced in value and with intervening rents. Charity woul prefer to ascribe the statements of this old woman rather to the lapse of time and the want of businesslike knowledge on her part than to corrupt motives. In these remarks I have been considering the testimony of the complainants alone, without noticing that for the defendants (all of whom except the three McIntires are disinterested witnesses) which contradicts every incriminating charge of Mary Pryor and the other complainants and their witnesses.

The case of Ackerman is of the same character. Can anybody believe Mrs. Ackerman's statement in her bill that she received only $75 from the sale of the small lot placed in McIntire's hands when it was proved clearly that about the time of the sale she had sworn in another case (where her interests seem to have been to minimize rather than exaggerate the amount obtained from the sale) that after reckoning costs, taxes, &c., she received $175? Neither of these cases could possibly stand alone, striking out the attack on the McIntires and the fact that there were five such accusations pending; and yet if Pryor's story is unreliable, and it be true that McIntire sold the lot to Jenison and conveyed it to him after a fair sale, that transaction was the end of all title of the Pryors, and what became of the land afterwards was a matter of no legal consequence to Mary Pryor.

Seeing no reason for changing the opinion I formerly expressed in these causes, I conclude in the language of the Supreme Court in Richards *v.* Mackall, 124 U. S., 188, which, after expressing its judgment that the complainant was not in a position to claim the interference of a court of equity because of his unexplained laches, declares "for that reason alone the judgment must be reversed and the cause remanded with directions to dismiss the bill."

I shall sign decrees dismissing each of these five bills with costs.

A. B. HAGNER,
Asso. Justice.

March 4, 1898.

IN THE COURT OF APPEALS, D. C.

Mr. Justice SHEPARD delivered the following opinion:

This is one of a series of five cases, argued and submitted at the same time, wherein different parties, complainants, have sued the same defendants to cancel certain deeds and annul certain pretended sales of lands, in the District of Columbia, claimed to have been made by Edwin A. McIntire, trustee, in violation of his obligations and duties as trustee, in certain express trusts, and in pursuance of a scheme to defraud the makers and grantors therein. The other cases are, No. 466, Brown *v.* McIntire *et al.*; No. 467, Ackerman *v.* McIntire *et al.*; No. 468, Southey *et al. v.* McIntire *et al.*; No. 469, Hayne *et al. v.* McIntire.

A considerable part of the testimony is common to all of the cases and was taken in one under a stipulation for its consideration in all.

In this case the original bill was filed by Mary C. Pryor, October 21, 1890, against Edwin A. McIntire, Martha McIntire and Hartwell Jenison, followed by an amended bill, November 28, 1890.

Complainant alleges that, on May 2, 1880, she was seized, in her own right, of part of lots 21 and 22 in square 569 (the same fronting 19 feet on F street in the

city of Washington), and that she and her husband, Thomas Pryor, since deceased, conveyed the same in trust to Edwin A. McIntire to secure the payment of a note for $450 made by them to defendant Hartwell Jenison. That she and her husband were colored people, ignorant of business methods, and relied upon the representations of said McIntire. That in the latter part of May, 1881, the note being then due and unpaid, he told them that he would be compelled to sell the property under the trust, but that said Thomas Pryor could bid off the property, and time would be allowed him to pay said indebtedness. That the sale was advertised and occurred June 17, 1881, when said Thomas Pryor became the purchaser at $700, and he and complainant remained in possession for some time. That McIntire informed them they should pay rent to him at $6 per month, which payments would be applied by him to the liquidation of the debt. That complainant has recently discovered that McIntire, instead of securing the property according to his representations, on the 28th of June, 1881, executed a deed, as trustee, to said lot to the said Hartwell Jenison, reciting a consideration of $806, which fact he concealed from complainant and her husband. That after making the said deed to said Jenison, said McIntire represented to him that the sum of $425 was necessary to pay taxes in arrears and expenses of sale, and procured from him authority to borrow said sum on the property. That he procured said Jenison to make a note for $425 to one Emma Taylor and to convey the lot to him, as trustee, to secure it. That about April 19, 1882, said McIntire represented to Jenison that the property could not be sold for more than the incumbrance, and induced him to execute a deed to said Emma Taylor for the amount thereof. Said deed was recorded April 21, 1882. That on September 27,

1887, McIntire again induced said Jenison to make a quitclaim deed to said Emma Taylor under the pretence that the same was necessary to recover certain drawbacks for special taxes on said property. That Emma Taylor is a fictitious person and an invention of McIntire's in aid of his scheme to defraud. That the $425 note to her was not necessary to pay the taxes, etc., on said property, and was a device of said McIntire's to cover up a fraud both upon complainant and said Jension, who relied on his representations.

That on May 31, 1884, said McIntire caused a deed to be made and executed, in the name of said Emma Taylor, to his sister, Martha McIntire, upon a pretended consideration, but really for his own benefit, etc.

The prayers of the bill are that an account be taken of what is due by complainant on the $450 note of May 20, 1880, to Jenison, and of all rents and revenues of the property, and that upon payment by complainant of any balance due by her, the said deeds be declared null and void.

Defendant Hartwell Jenison filed an answer in which he says that he was not present at the sale of the property and had no knowledge of any agreements, between McIntire and the said Pryors. He admits that he signed an order for sale at McIntire's request, and that a deed was made to him for the property. He admits the representation of McIntire about the amount due after the sale to remove incumbrances upon the lot, and the execution of the note for $425 to Emma Taylor and the execution of the trust deed. He admits that upon McIntire's representations he subsequently conveyed the property to said Emma Taylor, and also made the quitclaim to her. He says that he never saw said Emma Taylor and does not know that there is such a person. That he was not aware

of any fraud, and acted throughout under the advice and representations of McIntire, and had perfect confidence in his good faith. He says also that he received nothing from the rent of said property during the time that he owned the same.

The answers of the McIntires deny all the allegations of fraud and the several agreements alleged by complainant. They say that the transactions were all with complainant's husband, who had frequently spoken of domestic trouble, and requested that all matters of business be kept from his wife and her relatives. That there was no understanding as to an extension of the debt when due, and that said Thomas Pryor told said McIntire he could not pay the note, and was willing to convey the equity to any one that would assume it. That accordingly, on May 3, 1881, complainant and her said husband conveyed the said property to Martha McIntire, subject to the trust deed of May 2, 1880. That on the next day, May 4, 1881, said Thomas Pryor entered into an agreement with said Martha McIntire for the lease of the premises for continuing his coal yard thereon. That afterwards, said Martha McIntire, finding out there was a large sum due for taxes, &c., on the lot, considered it was best to let it be sold under the trust deed That the property was then advertised, on Jenison's authority, and also by his authority struck off to him for $806. That Jenison declined to pay the cost of sale, commissions, back taxes, etc., and authorized said McIntire to procure a loan of $425 for that purpose, which he did. That Jenison declined to pay that note when due, and decided to release his equity to the payee therein. That on June 29, 1881, in consideration of the surrender of his note, Jenison made a conveyance to said Emma Taylor, who, about one month thereafter, conveyed to Martha McIntire.

That on September 27, 1887, said Jenison made a quit-claim deed to said Martha McIntire (and not to Emma Taylor, as alleged in the bill), to cure a defect in his former deed to Emma Taylor and to enable Martha McIntire to procure any rebate that might be made on account of the large sums paid for special taxes. They deny that Emma Taylor is a fictitious person, and say that she was "a Philadelphia lady who formerly lived in Washington, but is now living in the West." They allege also that Martha McIntire is a purchaser in good faith and has since erected four brick houses on the lot; and that complainant, although living near by, made no claim to the property, etc.

The cases were submitted together, below, as here. The learned justice before whom the hearing was had, declining to pass directly upon the issues of fact, and expressing no opinion with respect thereto, dismissed the bill, in each case, upon the ground of laches in the several complainants.

1. Before proceeding to the consideration of the question of laches we think it necessary, as well as proper, to state our conclusions with respect to the questions of fact that are in issue.

A great mass of evidence has been introduced not only concerning the particular issues in this cause, but also respecting the important issue, common to all the causes, as to the existence of the person called Emma Taylor.

Some of this evidence is incompetent, and much is inconsequential; but to review it in detail, pointing out those particulars and giving an abstract of that upon which our conclusions are founded, would, we think, be an unnecessary consumption of time and space.

Without, then, entering into those particulars we consider it sufficient to say, that after a careful consideration

of such of the evidence as is clearly competent and relevant, we have arrived at the following conclusions:

(1) There is no such personage as the Emma Taylor who figures in the transactions of this and the other cases as grantee and grantor in certain deeds and instruments of writing. She is an invention of Edwin A. McIntire.

(2) Who actually signed the name, Emma Taylor, and personated her in acknowledging the execution of the many deeds purporting to have been made by her, need not be certainly ascertained. The evidence, however, tends strongly to show that Emma T. McIntire, sister of the defendants, signed the name to all of the said deeds. Two experts in handwriting, of reputed skill, express that opinion. Comparison of the Emma Taylor signature with certain signatures of Emma T. McIntire, acknowledged to be genuine, does not tend to lessen the weight of the expert testimony. Certain facts and circumstances tend to strengthen the conclusion.

Annie L. Galliher, who is the daughter of a brother of Emma T. McIntire, testified that her father's name was Edwin Taylor McIntire, and that the T in her name stood for Taylor; and that she was ordinarily called "Emma Taylor," in the family, to distinguish her from witness' sister Emma V. McIntire. Edwin, Martha, and Emma T. McIntire denied this, and said that Emma had herself assumed the T to distinguish her from other Emma McIntires, and it had suggested itself because her father had often called her "Tinsey ush," and she had, when small, called herself "Tots." Our conclusions with regard to the evidence of these persons, upon certain other points, are such that we cannot accept their statements as sufficient to overcome the evidence of a single unimpeached witness, who, besides, has no pecuniary interest in the case, whatever may be the ill feeling between her and

them. Moreover, a certain unquestioned and unexplainable fact, which was under the circumstances relevant testimony, shows that the said brother and sisters were capable of such personation and fraudulent imposition upon an officer authorized to authenticate instruments. They had another sister, Sarah I. McIntire, who died in Philadelphia, January 10, 1881, leaving a deposit of $1,196.60 in the Philadelphia Saving Fund Society. Martha McIntire drew this money upon the presentation of a power of attorney purporting to have been executed on May 2, 1881, by said Sarah I. McIntire, and acknowledged on the same day before a notary public in the city of Washington. The blank spaces of this instrument were filled out by E. A. McIntire, and he subscribed the same as a witness.

(3) Martha McIntire is not an innocent purchaser of the property in controversy in this or in any one of the cases. She and her sister Emma T. McIntire have, under the influence of their brother Edwin, co-operated with him in his schemes to defraud this and other complainants.

Whether the money advanced from time to time in making loans, purchases and improvements, really belonged to Martha McIntire, is immaterial. As between her and her brother Edwin A. McIntire, it must be regarded as belonging to her. In taking an account thereof, and of rents received, whether in her name, or that of Emma Taylor, she must be regarded as the party interested.

(4) Hartwell Jenison is an old man, and has been engaged as a clerk in the Treasury Department of the United States for many years. He first loaned $500 on the property, taking the assignment of a note to Geo. E. Emmons secured by trust deed. The transactions were

all arranged by and through a brother of Edwin A. McIntire, who was a fellow-clerk. Pryor paid the interest and $50 of the principal, the collection of which was attended to by Edwin A. McIntire. He negotiated a renewal for the remaining $450 of the principal, and caused a new note and trust deed, with himself as trustee, to be given by the Pryors. When the note matured, McIntire informed Jenison that the Pryors would pay no more, and that improvement taxes and incidental expenses would amount to about as much as the face of the note. Jenison, having no more money, requested McIntire to do the best he could with the property.

Jenison did not attend the sale, and was afterwards shown the deed made to him as purchaser. McIntire then caused him to execute a note for $425 to Emma Taylor, and a trust deed on the lot to secure the same. This sum McIntire told him was necessary to pay the taxes and expenses. McIntire found no purchaser for the property, and when the note fell due, Jenison, at his instance, conveyed the lot to Emma Taylor and received his note. No money was paid him. He subsequently, at McIntire's request, made the quitclaim to Martha McIntire to perfect the title, and was paid $100.

Jenison is apparently a credulous old man of little business capacity, and it is evident that he made no inquiry into the facts himself, but relied implicitly on the statements of McIntire, who was his agent and trusted adviser throughout.

During the time that elapsed between the sale to him and his deed to Emma Taylor, McIntire collected $6 per month rent of Thomas Pryor, of which no account was rendered to Jenison. Jenison has received $100 from the loan, and no interest whatever.

(5) Mary C. Pryor and her husband were simple-minded

colored people, and relied fully in the integrity of Edwin A. McIntire, whom they believed to be their friend. They trusted him to arrange the second renewal of the loan and also the third. He led them to believe that a sale would be formally made on account of the Jenison note, but the property would be secured to them. He evidently led them to believe that the sale would be, and had been, made to Thomas Pryor. Probably he intended at first to continue the loan in the name of his sister Martha, for, on May 3, 1881, he caused the Pryors to convey the property to her, upon a recited consideration of $5 and the payment by her of the encumbrance thereon. On the next day the property was leased by her to said Pryor for $6 per month. The Pryors evidently understood this as carrying out the agreement by which time was given, and that the rent payments were to be devoted to the liquidation of the debt.

Pryor paid the rent for several years, until his business failed. He and his wife had the key to the place, on September 24, 1884, when, at the request of McIntire, they gave it to Mr. Mack, a tenant, who then entered and paid rent to Edwin A. McIntire regularly for about fourteen months. The complainant then claimed ownership of the property, and did to the builders who afterwards erected the houses now claimed by Martha McIntire.

(6) Complainant delayed the institution of her suit until October 21, 1890, more than nine years after the sale under the Jenison trust deed. She was very poor and had but little intelligence. That she had perfect confidence in McIntire, in the beginning, is evident. She was kept in ignorance of the facts of the sale, and of the truth about the so-called Emma Taylor, and had no information with respect thereto until a short time before the institution of this suit, when she learned from the

publication of the facts in a suit brought by certain heirs of David McIntire against Edwin A. McIntire, that said Emma Taylor was probably a fictitious person, whose name was used by said Edwin A. McIntire in perpetrating frauds upon her and others.

(7) The lot in controversy, at the time of the sale under the trust deed in June, 1881, was worth about $2,000 exclusive of the improvements. At the time the testimony in this cause was taken, September, 1893, the lot was worth about $3,900, exclusive of improvements. There were some back taxes due on the lot in 1881, but not so much as represented by McIntire to Jenison.

2. It remains now to consider whether the defendants shall be permitted to hold and enjoy the fruits of their fraud because of the laches of the complainant in the prosecution of her just and equitable claim.

In this consideration it must be borne in mind, that the complainant is an ignorant colored woman, unfamiliar with the transaction of business and easily deceived. She was poor and friendless. The assertion of her equity depended, for its foundation, upon parol evidence. Besides, it could avail nothing against the titles of Jenison and "Emma Taylor," who, as to her claim, were the apparent holders of superior equities. Until she learned that said "Emma Taylor" was probably an invention of McIntire, and was thereby induced to inquire of Jenison concerning the facts, she can hardly be blamed for her inaction. Nor is there any reason for holding that she ought to have discovered those facts sooner.

Under all the circumstances we think the delay was not unreasonable. Moreover, there has been, in addition to the delay, no conduct whatever, under all the circumstances, that can be held to amount to acquiescence, or to a waiver of her right to redress. There has been no

change in the situation of the parties; no sudden or great increase in the value of the property; no intervening equities of innocent persons; no loss of important testimony, nor death of witnesses whose evidence might probably have created a doubt with respect to the fraudulent conduct of the defendants.

Nothing but the mere lapse of time—less than one-half that which would bar an action at law to recover possession—stands between the complainant and the enforcement of her undoubted right.

It is true that one witness has died, pending the suit, whose testimony would have been material. This was William Helmick, the justice of the peace who certified to the acknowledgments of the several deeds by the so-called Emma Taylor. In the light of all the facts, however, it is not possible that defendants have been put to any disadvantage by the loss of his testimony. Presuming him to have been honest, as we must, his testimony would, more likely, have strengthened the case of the complainant. The so-called Emma Taylor was doubtless introduced to him by McIntire and he certified to her as well known to him through confidence in the truth of his representations. He could not have testified otherwise without making himself a party to the conspiracy to defraud, because, as we have heretofore announced, there was no such person as said "Emma Taylor" in existence.

The familiar maxim, that, "equity aids the vigilant," is a typical doctrine of equity jurisprudence, and, in its application, best illustrates the beneficent spirit of its administration. The rule is neither arbitrary nor technical; but capable of rigid contraction on the one hand, and of wide expansion on the other, in the sound discretion of the chancellor, according to the special circumstances of each particular case. This idea is well expressed by Mr.

Justice Brewer, in the following words: "The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them.' Holstead *v.* Grinnan, 152 U. S. 412, 416.

We are not content, however, to rest our decision of this case upon the sufficiency merely of the excuses offered for the delay. They are not of the strongest, and in some classes of cases might he held insufficient. We will therefore go a step further in the announcement of a doctrine applicable not only to this case, but those that have been argued and submitted with it.

The testimony clearly shows that Edwin A. McIntire, not satisfied with the liberal fees and charges of the business, conceived the idea, early in his relations with complainant, and with Jenison, of defrauding them. Taking advantage of the trust relations and the confidence reposed in him by simple-minded people, he concocted his several schemes and carried them into execution through false representations and personations and the spoliation of papers.

In such cases, where there are no intervening equities, no elements of estoppel, and no inequitable conduct on the part of the injured parties themselves, is not a court of equity warranted in holding that nothing short of the statutory period of limitations in analogous cases at law, should bar the remedy? We think so, clearly, and believe that we are supported both by reason and authority.

In Prevost *v.* Gratz, 6 Wheat. 481, 497, the court said:

"It is certainly true that length of time is no bar to a trust clearly established; and in a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief."

In the noted case of Michoud *v.* Girod, 4 How. 503, 560, where an executor's sale was set aside for constructive fraud after the lapse of more than twenty-seven years, Mr. Justice Wayne, speaking for the court, said: "In a case of actual fraud, courts of equity give relief after a long lapse of time, much longer than has passed since the executors, in this instance, purchased their testator's estate. In general, length of time is no bar to a trust clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to exclude relief. Prevost *v.* Gratz, 6 Wheat. 481. Generally speaking, when a party has been guilty of such laches in prosecuting his equitable title as would bar him if his title were solely at law, he will be barred in equity, from a wise consideration of the paramount importance of quieting men's titles, and upon the principle that *expedit rei publicæ ut sit finis litium;* and, although the statutes of limitations do not apply to any equitable demand, courts of equity adopt them, or, at least, generally take the same limitations for their guide, in cases analogous to those in which the statutes apply at law. 10 Ves. 467; 1 Cox, 149. Still, within what time a constructive trust will be barred, must depend upon the circumstances of the case. Boone *v.* Chiles, 10 Pet. 177. There is no rule in equity which excludes the consideration of circumstances, and, in a case of actual fraud, we believe no case can be found in the books in which a court of equity has refused to give relief within the lifetime of either of the parties upon whom the fraud is proved, or within thirty years after it has been discovered or becomes known to the party whose rights are affected by it."

Our conclusion on this point has the support of the following well-considered cases: Lawrence *v.* Rokes, 61 Me. 38; Platt *v.* Platt, 58 N. Y. 646; Aylett *v.* King, 11 Leigh, 486; Gibbons *v.* Hoag, 95 Ill. 45, 69; Scherer *v.* Ingerman, 110 Ind. 428, 433; Ryle *v.* Ryle, 41 N. J. Eq. 582; Archibald *v.* Scully, 9 H. L. Cas. 360, 387; De Bussche *v.* Alt, L. R. 8 Ch. Div. 286, 314.

The case of De Bussche *v.* Alt is cited with approval by the Supreme Court of the United States. Kilbourn *v.* Sunderland, 130 U. S., 505, 519. In that case, which was one where agents had defrauded their principal, Chief Justice Fuller said: "Reasonable diligence is of course essential to invoking the activity of the court, but what constitutes such diligence depends upon the facts of the particular case. Where a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and mere submission to an injury after the act inflicting it is completed cannot generally, and in the absence of other circumstances, take away a right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of such right."

We find nothing in the later decisions of the Supreme Court, to which we have been referred by appellees, in denial of the doctrine of the earlier cases, or that which is expressed in the quotation from Kilbourn *v.* Sunderland, *supra*.

The case most relied on is Hammond *v.* Hopkins, 143 U. S., 224. But in that case the bill was filed immediately before the expiration of twenty years after the sale complained of. The court found there was no actual fraud on the part of the trustee and that everything was known to, and acquiesced in by, the *cestuis que trustent* at the time, and held that laches barred the complainants. That

the distinction between that case and one of actual fraud, was borne in mind, is apparent from the concluding part of the opinion, where the court, speaking as in Kilbourn *v.* Sunderland, through the Chief Justice, said: "In all cases where actual fraud is not made out, but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence."

In the latest expression of the court upon this subject, viz: Abraham *v.* Ordway, 158 U. S. 416, to which also appellees refer, there was no fraud. In fact all the equities of the case seemed to be on the side of the party complained of.

It is unnecessary to discuss the question further. We cannot, solely on account of the delay of the complainant, refuse to undo the frauds that have been committed against her, and deny her the relief to which she has shown herself to be entitled.

The decree appealed from must, therefore, be reversed, with costs to the appellant. The cause will be remanded to the court below, with direction to take an account of the indebtedness remaining due by the complainant to Hartwell Jenison, together with an account of the reasonable value of the rents and revenues collected by the defendants since May 4, 1881, or that should have been received by them, as well as of all moneys that have been expended by them or either of them in the payment of taxes and all other proper charges on said premises. And upon the coming in of such report a final decree will be passed annulling each and all of the several trust deeds and conveyances that cloud the title to said premises, and awarding possession thereof to plaintiff upon

her paying, within a reasonable time, whatever sums may be found to be actually due, first to said Hartwell Jenison and then to the defendant Martha McIntire upon the settlement of the account aforesaid; all costs to be taxed against defendants. It is so ordered.

No. 373. 109.
Motion Papers for Appls.
Filed Nov. 15, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

EDWIN A. McINTIRE AND MARTHA McINTIRE,
APPELLANTS,
v.
MARY C. PRYOR,
APPELLEE.

No. 373.

Answer to Suggestions Made by Appellee of a Diminution of the Record.

It will appear from the stipulation found on page 2 of the appellee's brief in support of the assertion of diminution of record, and which was entered into by S. S. Henkle, now deceased, who was, at that time, solicitor for the appellants, and Franklin H. Mackey, counsel for appellee, that it was only such testimony in the other equity cases mentioned, referred to in the appellee's motion, as should be relevant to the issue in this case, that could be referred to and read at the hearing in this case, and which was also to be subject to all and any objections as to materiality and competency thereof.

It will be thus seen that by her own showing the appellee is not entitled to have the testimony in bulk, as taken in said other equity cases, made a part of the record in this case, but only such as is relevant, material, and competent. But, were this provision not in the stipulation, the rules of evidence would govern and without said stipulation only such as is relevant, material, and competent could be made a part of the record in this case.

The records in all of these cases united will make a mass of additional testimony of about 500 printed pages, and it would be a hardship to impose upon the appellants the expense of having such a mass of matter sent up as part of the transcript in this case, and then the further expense of printing, when, as we submit, it is doubtful if any part of it is relevant, material, and competent. It is stated in the appellee's brief that no appeals were taken by the appellants from the decrees passed in those cases. This is true, but the reason was that the amounts involved in the other cases were not within the appellate jurisdiction of this court—each being for a very small amount, comparatively.

The appellants, therefore, suggest that the counsel for the appellee should be required to file a statement of the particular evidence and exhibits, that were used in the hearing below and are not contained in the transcript now on file in this case, which he deems necessary for the proper presentation of his case, with leave to the appellants, upon said statement being filed, to file such other parts of the evidence as they may think necessary, to meet that called for by the appellee.

ENOCH TOTTEN,
FRANK T. BROWNING,
For Appellants.